

W-15-8

AN  
ABRIDGEMENT  
of all SEA-LAVVES.

Gathered forth of all  
Writings and Monuments,  
which are to be found among any  
people or Nation, upon the coasts  
of the great Ocean and Mediterra-  
nean Sea.

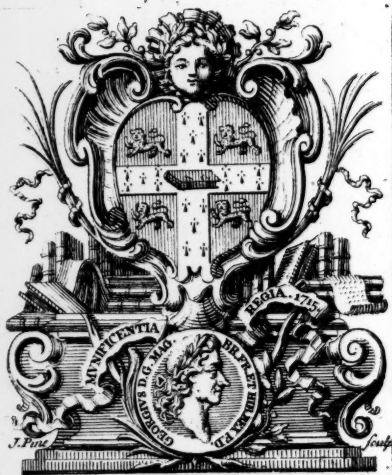
And specially ordered and dispo-  
sed for the use and benefit of all be-  
nevolent Sea-farers, within his Maje-  
sties Dominions of Great Britain,  
Ireland, and the adjacent Isles  
thereof.

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By WILLIAM WELVOD,  
professor of the Civill Law.

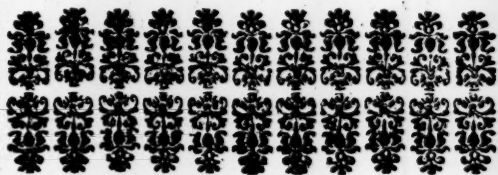
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LONDON,  
Printed by the Assignes of Ioane  
Man and Benjamin Fisher, 1636.



1557 00





TO  
THE HIGH AND  
mighty Prince, *James*,  
King of Great Brittain,  
France and Ireland,  
&c.

**I***T pleased your M.  
some yeers past,  
most graciously  
to accept of this  
birth, in the great weakenesse  
and infancie thereof. Therefore*

is it, that now being strong, and  
by all warrants inarmed, it most  
thankfully returnes, offering  
service to your M. even for all  
the coasts of your Highnesse do-  
minions, upon hope to merit  
your former grace.

Your M. most humble  
subject, and daily orator,

W. Welwod.



To the right Honourable, LUDOVICK, Duke of Lenox his Grace, &c. Henry, Earle of North-hampton, &c. and Charles, Earle of Nottingham, &c. Lords Admiralls of England and Ireland, of Scotland and the Iles, and of the Cinque Ports.



Aving intended a painefull & new labour, upon a rare and necessary argument, as for al Sea-farers, so also properly pertaining to your Honours, my most noble Lords; I could not but of due salute your Honours, as the kee-

## *The Epistle*

pers of Sea-lawes, for a refreshing remembrance, and needfull consideration of that most honourable estate and high office, presently, and (I hope) happily allotted unto you: I meane, the Admiraltie of his M. dominions; a charge both ancient from many hundreth yeeres in this Ile, and most honourable by the personages your predecessors, bearing the same: as being all, either sonnes, brothers, uncles, or cousins to Princes, or (at least) for action most famous. With all the which, that your Honours may the better ranke and match, surely, as the condition of these daies craves, so the best disposed wish, that as you be every other way Noble, your nobility may be crownd with a carefull attention to the speciall parts of the Admiraltie requiring the same,

## *Dedicatory.*

same, to a memoriall surpassing  
all ancestors: I meane the con-  
servacy, jurisdiction and privi-  
ledges thereof. The jurisdiction,  
albeit it bee most faithfully and  
diligently exercised, and name-  
ly in *England* by Sir *Daniel*  
*Dunn*, and Doctor *Trevor*, most  
learned, sincere, and worthy col-  
leagues, Iudges in the high court  
there: yet the daily thwarting  
and curbing of the proceſſe of  
the Iudicature, urges a clearing  
or designing of the limits and  
marches, to a better distinguish-  
ing thereof from all other ju-  
risdictions ordinary; without  
which, due justice can neither be  
administred, concerning the sea  
customs (of which no court else  
can take knowledge) for stran-  
gers traffiquing here (importing  
no small staine to the King his  
justice) nor yet for his M. lieges  
traf-

## The Epistle

traffiquers on sea, whose contracts and charter-parties ordinarily beare the clause of ruling by law of *Oleron*; a forraine law, as all the other lawes of the Admirall court commonly are, whereof no other Iudicature here can take cognissance.

To end this point; Beside that which God in the heavens requires of the ministers of justice, please you to remember, that here below amongst men, *Nihil iustitia popularius*. Consequently therefore, the priviledges due for the maintenance of the Admirakie and iurildiction thereof, would be vindicat from all sort of encroching and usurping. But above all, the conservacie (as the chiefe point of that office) requires security and safety in common for all loyall subjects, traders on Sea: specially,  
for

## Dedicatory.

for Fishers and others, happily disposed to adventure and exercise the trade of fishing, to the end, that not onely a peaceable, but also a full and plentiful fishing may bee enjoyed by the inhabitants of his M. kingdomes, even according to that which God so freely and bountifully offers into their very doors. For which cause, the barbarity of the Ilanders would be repressed, and strangers stayed from scarring, scattrring, and breaking the shoals of our fishes; namely, upon our coasts of *Scotland*. There could be no better employment for some (at least) of his M. shippes and companies, *Ne vel illiusque turbent, aut isti intercipient, quod nos capere oportet.*

But, I breake from this purpose, remitting the same to the 27 Title of this booke; hoping  
for

*The Epistle, &c.*

for a comfortable out-bearing  
and maintaining of that necessa-  
ry and great dignity of the Ad-  
miralty by your LL. according  
to all the occasions of these quar-  
rellsome times. And so I rest, by  
this present token, devote to  
serve your Honours in my cal-  
ling.

William Welwod.





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The





*The Proheme containing  
the Origine of the Sea-law:  
with the occasion of this  
Treatise.*



Concerning the  
Argument of  
Sea-faring go-  
vernement, so  
farre as by any  
monumets can be observed,  
our beginning must be at the  
inhabitants of the Iland cal-  
led *Rhode*, situate within the  
*Mediterranean* Sea, in the  
B part

part thereof called the *Carpath* sea, upon the coast of *Asia minor*, over against *Garia*. The indwellers whereof, amongst all other people we can reade of, were most famous for shipping and Sayling; and that not onely to the great increase of their power and wealth every way, as by which they did command and daunt all other people about their coasts and seas; in such manner, that neither Pirat, nor any sort of enemy, or disturber of their peace and trafique, durst then appeare: but also by the communicating

ting of their trade, and discipline on sea, they did make neighbour Princes, and Cities, willingly Tributars unto them *b*. And further, as *Strabo* writeth *c* to the crowning of their renowne, they surpassed all other Nations in knowledge of equity in marine businesse; which they manifested by making of Sea-lawes.

*b Strab. geogr. lib. 12. cap. 14. c Ibid.*

For, the very Emperors of Rome, *Tiberius Caesar*, *Hadrian*, *Vespasian*, *Traian*, successively, did referre all seafaring debates and controversies, to the judgement of the *Rhodian* law. *d* And

*d Vide Il. Rhodior. in prin.*

4 *An Abridgement*

e L. deprecatio  
ad L. Rhod. et  
c. rhodie leges.  
distinct. 2.

so likewise exemplarilie, did  
their successor *Antoninus*, by  
his rescript yet extant e:  
wherein, answering to one  
*Eudemon* his plaint, I am  
(saith he) the Lord of the  
world, but the law is the ma-  
ster of the sea; let that thy  
plaint and controversie *Eu-*  
*demon* be decided by the law  
of the *Rhodians*.

So farre did the Romans  
(who alwaies excelled all o-  
ther Nations, in devising of  
humane lawes) yeeld and  
give place to the *Rhodians* in  
the sea lawes.

And by their example,  
finding sea-faring and tra-  
fique



rique on sea, redound to a  
great common wealth, as  
plainly pronounced *fVlpian*, f L. 1. sect. licet.  
de exerc. abl.  
one of the fathers of their  
lawes; the Romane Empe-  
rours, and namely *Claudius*,  
g brought in new formes of g Suero. ca. 218.  
actions, and devised a kinde  
of new and sure commodi-  
ties and gaine for traffiquers;  
by taking upon them the  
hazard of shippe and goods:  
to which end also is erected  
by English lawes, the office  
of Assurance.

It is true, that the first ma-  
king of Sea lawes, is other-  
wise by some attributed to  
others, as by *Dionysius* to

*h. De situ orbis.*

*i Lib. 7. natur.  
histor. vide E-  
gebiar. c. 27.*

the *Pbenicians*, because of Merchant trade *h.* And *Pli-nius*, for that same cause ascribes the Art of sayling to the *Carthaginians. i.* and consequently, would seeme to attribute to these two Nations also for their necessitie, the skill of sayling. To be brieft, by the space of a thousand yeeres, the sea, at least the *Mediterranean*, was onely ruled by the *Rhodian* law, but helped with some few additions by the *Romans*, and that by way of interpretation: therather, to occurre to the deceits and *Sophistrie* of calumniators  
and

and wilfull vexers of their neighbours, as also for other needfull doubts k.

k Dosimus in  
lib. suo legoli.

At last, when all sorts of lawes by the everſion and renting of the Romane Empire, was as it were for a long time buried, neceſſity forced the Rulers of Rome, *Anno Dom. 1075.* to make new ſea lawes and ſtatutes: and ſo ſucceſſively, every chiefe ſea-faring towne upon the *Mediterranean* coaſt, to adde other ordinances; as they of *Marſeilles* did, *Anno Dom. 1162.* and they of *Genua*, *Anno Dom. 1186.* And they of *Peloponneſus*,

8      *An Abridgement*

called *Morea*, *Anno Dom.*  
 1200. and the *Common-*  
*wealth of Venice*, *Anno Dom.*  
 1215. And the Emperours  
 of *Constantinople*, *Paleo-*  
*log.* *Anno Dom.* 1262. and  
*Constantine*, 1270. and *James*  
 King of *Aragon* that same  
 yeere; and *Peter* King of  
*Aragon*, *Anno Dom.* 1340.  
 and they of *Barcelona*, *Anno*  
*Dom.* 1434. which lawes  
 being all collected and amas-  
 sed, serve the *Mediterraneans*  
 unto this day.

But on the great Ocean,  
 which is our sea, the first  
 lawes we knew to be made,  
 were devised by them of  
 the

the Iland of *Oleron*, situate on the sea coast of *France*, beside *S. Martin* against the mouth of *Charante* and the *Marras*, neere to the entry of *Garumna*: which are therefore called *La roold'Oleron*; as by which the controversies on the sea coast of *France* toward the Ocean were ordinarily decided, in the towne of the said Ile, called thereupon, *Lavile de droict*, or *Oleron*. As where the skilled Skippers in that law did dwell, and had cognition of all such occurrent debates and questions.

Now

Now these lawes of *Ole-ron*, were afterward translated into Dutch by them of *Wisby*, for the sea use of the Dutch coast.

And of late, our Kings of *Scotland* made divers Acts in Parliament, concerning sea-faring l.

*l V. de act. par.  
lia. Scot.*

*m Vide statut.  
Ang.*

As also the Kings of *Eng-land* have done before m: for *Edward* the third, by a solemne inquisition of eigh- teene most famous persons for skill in sea-faring, assem- bled at *Quinborow* from divers parts, Anno 1375. set downe certaine articles concerning the Admiralty and

of all Sea-lawes. 11

and sea-faring, into old French: as may be seene in an old parchment authenticke booke yet extant; which articles one *Thomas Roughton* of that same, turned afterward in Latine, and intituled *de officio admiralitatis Angliæ*.

Likewile *Fredericke* the second of *Denmarke*, in his generall convention, at *Copenhaven*, Anno 1561: sets downe a compend of Statutes, for ruling of his Sea-faring subjects; but for most part all one with *La roole d'Oleron*.

Also the French King  
*Henry*

Henry the third, added his new constitutions to these of *Francois*, and others his predecessors, which are chiefly for the authorising of his Admiralty, Jurisdiction, honour and profits thereof; preferring the Admirall and his officers to all other Judges and Iustices, except these called Royals.

Notwithstanding all these many, divers, and late Statutes and Ordinances made and set forth these sixteene hundreth yeares, by the nations, people, and Princes above written, in the decision of causes, and judging of  
sea.



sea-faring controversies; that  
 fragment of the *Rhodian*  
 law, extant and Latinized  
 by *Simon Sbardius*, intituled  
 by him, *Leges navales Rhodi-*  
*orum & selectæ Leges Rhodio-*  
*rum*, with the interpretations  
 and commentations, devi-  
 sed thereupon by the old  
*Romane Jurisconsults* insert  
 in the *Pandects*; together  
 with the constitutions made  
 by the *Romane Emperours*,  
 contained in the *Cod.* and  
*Novells* at large: as it were  
 by common consent of Na-  
 tions, obtaines the preroga-  
 tive throughout all *Europe*,  
 as in *Great Brittain*, Ger-  
 ma-

many, *France, Italy, and Spaine.* Such is the force and authority of the *Civill Roman Law* amongst all Nations Christian.

In which Countries, albeit there hath bin, and yet remaines a great number of professors and doctōrs of the *Roman civill law*, who have written largely there-upon; yet few or none hath taken in hand to write pertinently or expresly, upon the lawes concerning sea-faring, the traffique on sea, and by sea, with the duties requisite of every sea-faring person, of all sorts and  
de.

degrees.

It is true that *Iulius Ferrettus* in his observant devoir to the Emperour *Charles* the first, prepared a discourse for the addressing of Navies with convenient and expert Governours, and all sort of necessities for hostility on the sea, intituled *de iure & re nautica*, but farre off from our present Argument, as may bee seene by the same of late published, *Anno 1579.* and dedicated to *Philip, Charles* his sonne, by *Exuperantius Ferrettus*, sonne also to the said *Iulius*.

*Petrus Pekkins* also a  
Fle-

Fleming Zelande, hath learnedly commented upon the titles of the civill law, touching the sea-lawes; but more busied about the exposition of words then of the matter.

Likewise *Benvenutus straccha*, in his large booke *de mercatura*, interlaceth a learned title, *de nautis, navibus & navigationibus*, but cometh not close to this our argument; for he holds straightly within the compasse of the civill law, protesting also his pretermissions and remissions of many chiefe matters to certaine Doctors, who also writes but  
*obiter*

obiter of the sea matters, and none speakes of the sea customs, which is our principall argument: To the end of which booke is annexed an halfe sheet of paper, bearing *consilia Roderici Suarij de usu maris & Navibus vehendis*; a turne of small contentment.

'Tis true that *Simon Shardi-  
dius, Anno 1561.* promised this same compend and collect of sea lawes forth of all lawes (which presently by Gods grace I intend) but by death prevented, could not performe it.

To conclude then, since no

C

man,

man, as I can understand, hath set his pen to this my argument and purpose, for the due information of every sort of sea-faring persons in every order, whether Commanders, Iudges, Skip-pers, Mariners, Merchants, Passengers, Fishers, Ferry-ers, Watermen, &c. concerning their severall duties, priviledges and powers, and all manner of things pertaining or incident to sea and sea-farers; I thought good, after the insight and deepe consideration of all the lawes and ordinances afore/aid, to mend a weake piece

piece of labour, which I intended many yeares since, intituled the *Sea law of Scotland*; and to frame the same in a very harmonick collection of all sea-lawes, And upon the conscience of my profession of the civill law, having no employment or part in any Admiralty, to publish the same for the use of the Admiralties, and benefit of all benevolent sea-farers; and that presently, because of the present use thereof so requiring the same, as I now cleerly perceive: that is to say; Because that wheras the most

civill, wise, and politicke nations, have even most carefully distinguished the jurisdiction of the sea from the jurisdiction of the land in all respects: yet neverthelesse some men please alwaies, upon what intent I wot not, to confound the same. And the multitude of these who doe acknowledge the foresaid distinction, as specially the Mariners, through ignorance contemne all other law but the rule of *Oleron*.

In these respects (I say) I have with great paine and travell, concluded the publication of this work; which  
if



*of all Sea-lawes.*

21

if it please (as I pray) God to  
blesse with the owne effect,  
I have reward enough.

---

C 3

*Tit.*

---



## TIT. I.

*The order of this Treatise.*

**A**S the affaires of the sea concernes onely sea-faring and medlers therewith : even so all doubts, differences, and controversies, rising upon the same, and their cases must also concerne the same persons, which are eyther chiefly Owners, Out-traders or hyrers, Masters, Pilots, Mariners, Clerkes, Merchants,

Merchants, Passengers. Of whom the owner is hee, to whom the ship or any part pertaines in property. The out-trader or hirer, hee, to whom as hirer or partner for a voyage or more, or a longer time, during<sup>o</sup> the hyring and lease of the shippe, the profits and commodities thereof redounds *a.*

*a L. i. de exercit. act.*

And the Master is hee to whom the whole care and charge of the shippe is committed *b.* The rest are all knowne. Now their persons whiles happens all to fall forth in one man; as one to be Master, owner, and out-trader,

*b L. i. ad l. Rhod.*

trader; and againe to be all  
divers and distinct: and  
therfore the actions to beare  
out accordingly. Likewise  
the cognition of their de-  
bates pertaines not to every  
Iudge indifferently, but only  
to the Admirall of the sea:  
which thing this Abridge-  
ment shall orderly and sum-  
marily declare; beginning at  
the Iudge ordinary to sea-  
fare causes, the members of  
the Court, and manner of  
proceeding there: next, the  
persons ordinary in shippes,  
with the fraughting thereof,  
as belonging to the chiefe  
uses of shipping: thirdly, the  
power,

power, duty, and priviledge  
of every one of the foresaid  
in ships: fourthly, the ma-  
nifold causes of losses and  
dammage in sea-faring, with  
the redresse thereof: fiftly,  
the priviledged ships, ship-  
wracke, shippes and things  
taken and found on the sea,  
or within the floud-marke  
thereof: and lastly, of Fi-  
shing, Fishers, Ferryers and  
Watermen, and Shippe-  
wrights.

*Tit.*



## TIT. II.

*Of the Iudge ordinary, in seafaring causes, with his jurisdiction, and priviledges.*

**A**S for the Iudge of the Sea, wee have first to consider, how at the beginning of the Roman Empire, there was a speciall difference betwixt the persons to whom the charge of shipping was given, and them to whom the commandement of Fleets and

and Navies was committed; and betwixt the persons who exercised the jurisdiction in sea-faring debates, as followeth.

For amongst the Romans in the beginning, first the builders, forthreakers, or furnishers, and preparers of Ships and Navies with all necessaries (by a speciall ordinance called *Lex Decia*) were stiled *Duum viri navales*; (a) as the Governours of these Fleets were called *Archigubernij*, (b) and the Iusticiaries of sea-faring debates, *Magisteriani*: even so amongst the Grecians, the Com-

a Livius lib. 5.

b L. Senus Saturninus ad S. C. trebell.

Commanders of their fleets were stiled *σπασμχι*. And after the Empire seated at *Constantinople*, *Magnus dux classis*, and *Drungarius magnus*, (c) as the chiefe carrier of the Pinsell or flagge. His stile afterward was *Admiratus*, from *Amiras*, a word of the Sarazens, signifying an Overseer, or a Captaine on sea or on land; for *Mirar* is to see, as the *Spaniard* uleth it. From this word *Amiras*, commeth the word *Amirante* to the Italians for the Leader of their fleets, as well as *L'amiraglio*: albeit they tearme their

c Vide frag-  
menta ascripta  
Polybio.



their sea-faring Iudges, *Li consoli del mare*, and such like from the same word Admirall, which most part of the Nations of Europe use in the same meaning; as first and chiefly *France*, where *Childebert* the first, one thousand yeeres sithence, instituted an Admirall as Capitaine and Commander of his Armie upon sea, like as he did then ordaine a Marshall for the government of his *Gen d'armerie* on land. Onely the *Spaniard* called this Leader and Commander of his fleets and navies, *Adelantado* : as who should  
goe

30      *An Abridgement*  
goe before the rest.

Briefly, the word Admirall, how ever this day it be used or abused, for to signifie the chiefe shippe, which was *Navis pratoria* to the Romans, as the chiefe Commander of the fleet; yet that word Great Admirall, notes properly the man whom the Romans called *Præfectorum maris*, and the Grecians, *Thalassiararcham*: to wit, the Governour of the sea. And thus farre concerning names and styles for the Commanders and Gubernators of ships, fleets, and seas.

But concerning the jurisdiction

tion of the sea, and the  
exercises of justice amongst  
sea-faring men; at first a-  
mongst the Romans, it was  
allowed to every President  
on the coasts, and afterward  
other Iudges were specially  
constitute at the sea sides,  
called *Magisteriani*: (d) but  
their Iudges were all coun-  
table to their higher Iudge,  
styled *Præfectus prætorio sub-*  
*limissimus*, from whom was  
no appellatiō or advocatiō e.

d Vide Alberic.  
ad novell. 17.  
& 24.

e L. à procon-  
sulibus. C. de  
appell.

Sithence, in these latter  
daies, for the readier obedi-  
ence to the great Admirall  
of the Sea, it is by common  
consent of Nations, suc-  
cessively

cessively agreed, that in consideration of the Admirals their soveraine commandement, their speciall preferment, and power upon the lives of men within the sea floud; that therefore they should also have a soveraine jurisdiction onely proper to themselves, over all sea-faring men within their bounds, and in all sea-faring causes and debates, civill and criminall. So that no other Iudge of any degree, at least in *Scotland*, may meddle therewith, but onely by way of assistance; and that by commission and in  
difficile

difficile causes, as was found  
in the action intended by  
*Antoin de la tour*, against one  
*Christian Marteis*, 6 Novem.

Anno 1542. (f)

f Tdm. i. c. 535  
regist. Scot.

In which jurisdiction, the  
first power necessary, is to  
constitute a Vice-Admirall  
and Captaines to supply his  
absence on sea; as also Deput-  
ties, for particular parts on  
the coasts, with the Crow-  
ners to view the dead bodies  
found on sea, or found on  
the coasts thereof, and  
Commissioners or Iudges  
generall, for exercising  
justice in his high Court on  
land, with Clerkes, Pro-

curers, Doome-slayers, Marshals, and other Officers, for the exercising of their said jurisdiction both in peace and warre: and therefore to sit and hold Courts where they please; to execute justice, to imprison and relax; and to command the Kings prisons and boroughs their prisons, to receive and keepe their warders and prisoners. (g)

g L<sup>e</sup> Admirall  
de France.

Finally, their authority should be distinctly acknowledged in all things pertaining to sea-faring.

It is true, that in *Scotland* before the erection of our  
d-

Admirall after the example of other Nations, the Deanes of Gild were ordinarily Iudges in civill debates, betwixt Mariner and Merchant, as the Water-bailly betwixt Mariner and Mariner, like as the high Iustice was Iudge in their criminals. Which actions all now falling forth betwixt the persons aforesaid, of due appertaines to the jurisdiction of the Admirall; and therefore his Iudge depute or Commislar, called Iudge Admirall, and none other, should sit, cognost, determine and minister iustice in the foresaid

D<sup>a</sup> causes:

causes: as likewise upon all complaints, contracts, offences, pleas, exchanges, assurances, debts, counts, charter-parties, covenants, and all other writings concerning lading and unlading of shippes, freights, hyres, money lent upon casualties and hazard at sea, and all other businesses whatsoever amongst sea-farers, done on sea, this side sea, or beyond sea; not forgetting the cognition of writs and appeales from other Iudges, and the causes and actions of Represals or Letters of Marque: yea,



yea, to take stipulations, cognossians, and insinuations, in the bookes of the Admiraltie: and to doe all other things without which the jurisdiction of the Admiraltie cannot stand nor beare out; and therefore to arrest and put in execution, to inquire within and without liberties, by the oathes of xij. men upon all offences. (b)

*h Vide diploma-  
ta admirator. in  
utroque regno.  
Vide latè de off.  
Admir. Ang*

As first, touching the revealers of the King & Countrey their secrets over sea, in time of warre.

Item, against Pyrats, their Assisters or Abbetters, Out-treaders and Receptors.

D 3

Item,

Item, against fortifiers of the Kings enemies, and harriers of his friends.

Item, against the breakers of the Admirals arrestments and attachments.

Item, against goods forbidden, and merchandise not customed, and yet shipped and transported.

Item, against the resisters of the Admirall his officers, in executing his precepts.

Item, against the forestallers, regraters, and dearthers of corne, fish, drinke, firewood, victuals carried over sea.

Item, against pleaders before

fore other Iudges than before the Iudge Admirall, in causes pertaining to his iurisdiction; as also against the Iudges cognoſcing therupon

*Item,* against them which give Sea-brieves, Testimonials, or such like, over sea, without power or licence from the Admirall.

*Item,* against transporters and carriers of traitors, rebels, manifest transgressors; and fugitives from iustice, over sea.

*Item,* against hirers and fraughters of ships of other nations, when they may be served by their own nation:

Item, against such as cast  
in ballasting, sand, or what  
else, in harbours, or chan-  
nels, that may defile or  
spoyle the same.

Item, against shippe and  
boat-wrights, extortio-  
ning the Lieges or subjects.

Item, against taking away  
the boigh from the anchor,  
or cutters of cables, or other  
teeves.

Item, against false weights  
and measures by sea.

Item, against shedders of  
other mens bloud on sea,  
or any Port or river below  
the first bridge next the sea :  
or them who are lamed or  
hurt

hurt through faulty and ill  
geare in ship.

Item, against Customers  
or Water-bailies, taking more  
custome or anchorage than  
wont.

Item, against such as ab-  
sent themselves from wap-  
pinshewing or mustering;  
which the Admirall may or-  
daine twise a yeere in time  
of warre, and once in two  
yeares in time of peace, up-  
on all dwellers at Ports and  
Harbors, or within one mile  
neere thereunto. (i)

*i L'Admirall  
de France.*

Item, all sorts of transgres-  
sions committed by sea-men,  
ferry-men, water-men, as  
well

well in floud rivers and creekes from the first bridge, as on the seas; Fishers, Pilots; Shipwrights, pressed men contemning the authority of the Admirall: and after due cognition, to levie and apply to his owne use the penalties and amercia-ments of all transgressors aforesaid, as due unto the Admirall; together with the goods of Pirates, Felons, capitall faulters, their receivers, assisters, attainted, convict, condemned, outlawed or horned.

*Item, wayffe or stray goods, wreck of sea, cast goods.*

*Item,*

Item, *deo dando*, that is to say, the thing, whether Boat or Ship, &c. that caused the death of a man, or where-out-of a man did perish.

Item, shares, lawfull prizes or goods of the enemy. siclike Lagon, that which was found lyand at the sea ground, and Flotson that is found swimming upon sea; and Jetson, which is cast forth of the sea to the shoare and coast, with anchorages, beaconnages, meare swine, Sturgeons & Whales, &c. and all fish of extraordinary greatnesse, called regall fishes; which all  
are

are allowed in great Brit-  
taine, France, and other no-  
ble kingdomes, to the Admi-  
rals, by their Sovereaigne; for  
the better maintenance of  
their estate, iurisdiction, and  
conservancie on seas, rivers,  
flouds, roads, ports, har-  
bours, channels, sayling, fi-  
shing, and all trading there,  
as altogether and chiefly  
committed to the care, main-  
tenance, and protection of  
the Great Admirall.

*Tit.*





TIT. III.

*Of the Admirall Clerke.*

**T**He Clerke of the Admirall Court, beside that he should be very skilfull, faithfull, and give his solemne oath thereupon at his admission: and beside the poynts of his office requisite and common to all Clerkes of other Courts, hee should have divers Registers, as for congees, saueconducts, passports, sea-

sea-briefes; as without which  
no shippe should passe to  
the sea in time of warre, nor  
yet to farre voyages in time  
of peace: (a) which no other  
Iudges nor Governours  
should give forth, but the  
Admirall onely. (b)

a *L'Admirall  
de France.*

b *Eodem.*

Item, one other Register for  
the reports of the Skippers  
and Captains, at their return  
to the Admirall also. (c)

c *Eodem.*

Item, one other Register  
for the names of Merchants,  
and Passengers, and Ow-  
ners; for the Skipper is hol-  
den to give up the said per-  
sons by name. (d)

d *Secundum act.  
parliam. 1ac. 5.  
cap. 27.*

And because no man ought  
to

to take upon him to be a Master or Pilot without due tryall of his skill: even so ought his triall to be registred in the Admirall his bookes. (e) But within the water of Thames, this tryall and registration of Pilots, pertaines to the Trinitie-house. (f)

e L'Admirall  
de France.

f Looke the  
Charter of the  
Trinity house  
on Thames.

Lastly, all money lent to hazard upon the sea, called of old *Pecunia trajectitia*, for certaine profit, called *Fœnus nauticum*, for the which the Lender was wont to beare the perill, against the manners of these avaricious daies, their lendings (I say) and

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and billes of assurance,  
should be done before the  
Admirall Clerke. (g)

g L<sup>d</sup> Admirall  
de France.

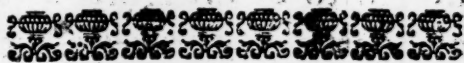
To conclude, no other  
Clerke or Writer, may med-  
dle or pen things concerning  
the sea-faring, without li-  
cense of the Admirall. (b)

h Kinter, art. 45

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*Tit.*

---



TIT. IV.

*Of the Advocates and other  
Officers assistants for the better  
and speedier proceeding in  
the Admirall Court.*

**F**Or the more upright  
proceeding, and easier  
dispatch of causes and  
plaints in the Admirall  
Court, it is found needful that  
all Procurers, before they  
be heard, sweare solemnly  
first, that they should doe  
nothing maliciously; but as  
soone as they finde their  
E                      action

action to be unrighteous in any part of the proceſſe, they ſhall tell it to their client: and if the client will inſiſt, then to ſhew it to the Iudge.

Secondly, that they ſhall not reveale their clients ſecret to the adverſary, nor yet collude with him to betray their client. And laſtly, that they ſhall propoſe neither dilator nor peremptor againſt their conſcience. (a)

a Il conſolare  
del mare.

To conclude, the oath of fidelity is likewise to be ſolemnly taken of the reſt of the officers of Court: for the due execution of  
their

of all Sea lanes.

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their offices, namely, at  
their admissions. (b)

b Eodem.

E 2

Tit.



## TIT. V.

*The manner of proceeding in  
Sea-faring causes.*

**T**He debates of sea-farers, and sea-faring actions, should be decided according to the received Lawes and Statutes of the sea: which fayling, then the customes and consuetudes of these are to be followed, (a) because all dispositions and ordinances commonly take their interpretation from consuetudes and uses. (b) And

a *Perl. de pre-  
cario ad l. Rhod.  
Bald. in l. ob-  
servan. in sect.  
antiquam de  
off. procons.  
b Innocent. in  
c. olim de verb.  
Sig.*



And if neither law writ-  
ten, or unwritten custome,  
nor consuetude occurs or  
appeares, the last refuge is  
to the opinions and senten-  
ces of skilled and upright  
men in the profession and  
exercise of sea-faring; because  
it is old and common, that  
the judgement of skilled and  
well practised men, should  
be followed in their owne  
trade and calling. (c)

*c Per l. 1. de  
vent inspic.*

But in the manner of pro-  
ceeding, it is a perpetuall pri-  
viledge, *Quod velo levato.* (d)

*d L. de submer-  
sis C. de nauf.  
lib. 11.*

That is to say briefly and  
summarily, causes should be  
cognosced, and without

the solemnitie of other ordinary Courts & judgements, onely looking to God and the truth; so that the Iudge should doe, if it were possible, as God himselfe. (e)

*e Vide rotam  
genuæ, & DD.*

Plaints then of sea-farers should be most summarily cognosced, but specially of shipwracke; for it were a cruelty to vex so miserable persons with the tedious ordinary proceedings of Courts, in so much as they need not to put their petition in writing. (f)

*f Bartol. Lucius  
& Iohannes ad  
d. l. de submersis.*

And because that sayling tends to a great Commonwealth, therefore least sea-farers

farers should bee wearied  
with pleas, and so either lose  
their right, or their trade, (g) g Secundum l.  
illum de pet.  
hered.  
summary processe should be  
common to them all.

Which sort of processe is  
so urged by the Doctors of  
Law, that they counsell  
Iudges, who feare appellati-  
ons or advocations, to pre-  
vent the same by a present  
execution; (b) namely, in h D B. & c. pro  
posu. & c. de for.  
comp. 1.  
causes of spoyle or wrack: so  
that upon every interloqua-  
tor, they may proceed to exe-  
cution, making restitution  
presently. Providing alwaies,  
that caution bee first found  
by the spoyled, to satisfie  
E 4 the

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the sentence of the Iudge of the appellation, in case it shall happen to be made. (i)

Il' Admirall  
de France.

This is also a priviledge of the sea-faring Iudicature, that albeit by the common rules of the law, where no *Litiscontestation* is past, no witnesse should bee received, *nisi ad eternam rei memoriam, ac adversario ad id citato*; yet in shipwracke, as a case very pittifull, any of the shippe-broken men may come to the Iudge of that part where the wrack happens, and by witnes brought with him, prove the wracke and spoile; (k) to the end that

k Si quis. 10. C.  
de naufrag.

that if any owner should pursue his goods, for to recover them, hee might be justly repelled by an exception of an innocent losse: (l) which should be done within a yeer and a day; namely, by such as were in service to the Prince and country. (m)

1 L. Fin. ad l. Rbad.

m L. quoties. de naufrag.

The like is to be observed also in causes of spoyle; where by the lawes of England, it is sufficient for the spoyler to prove his goods by his marke, &c. (mm)

mm Vide stat. Ang.

In which doing, no citation is required; and that against the common law: (n) yea, the death of the ship-broken

n L. de unoquoque. de re iudica. & L. quoties. c de naufrag. lib. 11.

broken may not onely bee proved by the rest living, but also by the persons, who were present at the preparation of their voyage, even their owne parents and children, if none of the ship-broken be on live. (o)

o De l. quæstio.

And as this is a priviledge extraordinary for such chances; even so ordinarily may Merchants and Mariners sayling together, beare witnesse each one to other of their society within ship, if they have neyther to lose nor gaine thereby; and namely Mariners, for or against the Skipper when the

the voyage is ended, and when they are free from his commandement. (p) For p li consolato artic. 231. & 322. by the consent of the Doctors, when the truth cannot be otherwise tryed, then unable persons may be heard.

Item, to the end that this trade bee not hindred by calumniators, and wilfull vexers of their neighbours under colour of Law: it is provided, that not onely the common caution, *Judicio fisci, & Judicatum solvi*, bee kept on the part of the defender; but also that the pursuer shall finde caution, *de expensis solvendis*, if hee faile

q Consent of  
all sea lawes.

faile in prooffe. (q)

Likewife, in case the party pursued be contumax, and will not compeire to defend himselfe, or his shippe, or things challenged; namely, after three or foure citations directed from the high Court of the Admiraltie, called *quatuor defaultæ* (for that citation called *Vnum pro omnibus*, is not sufficient to convince one of contumacy) specially in the claime or vindication of a shippe, any part thereof, or any other such like thing or goods; then may the Iudge ordaine his Marshall or officer, by his



his sentence called *primum decretum*, to put the plaintiffe in possession thereof, at least to the worth of the suit: Providing notwithstanding, that if the party compeir within a yeare and a day after, offering the expence made to the pursuer, and caution to obey the definitive, he shall yet be heard upon the propriety. Otherwise, that time being fully expired, the Iudge may proceed and adjudge the propriety of the ship to the plaintiffe. (r)

Neither is it needfull to execute summons or citations

r De offic. Admi. Ang. in fin. cum ibi citatis.

tions in such cases, elsewhere but where the ship or quarrelled goods in question lies, or at the part usuall of their haunting. (s)

*sIbid.*

Further, as this way it is provided for the snibbing and staying of calumniators in iudgement: even so it is ordained against maliciousnesse out of iudgement of such persons who onely to hinder and stay their neighbours, vexes them with needlesse arrestments; that upon caution such arrestments be speedily losed, except it be either for fraught already deserved, or mariners

riners wages, or such cales  
wherein by law the shippe  
is obliged; or else for service  
to the Prince: (t) as also if ar- *il casolato 41*  
restment be used, eyther up-  
on goods, or mariner ready  
to saile, the same may bee  
loosed, upon caution to make  
forth-comming so much  
goods as the mariner hath  
within ship-boord. (u) *u Denmarke.*

*Tit.*



## TIT. VI.

*Of persons ordinary in ships.*

**T**Ouching persons ordinary for sayling in ships, they are of divers orders, and therefore diversly stiled: as first, hee who beares charge over all the shippe and kippage, is commonly called by us, and most part of nations, both now and of old, and specially by the Romane lawes, *Navicularius*, or *Magister Navis*:

*Navis*: (a) that is, as wee a L. i. & pas-  
sim. ad l. rhod.  
& l. i. parag. 2.  
naut. caup. speake, Master of the ship;  
by the Dutches, Skipper; &  
by the Grecians, *Nauarchus*  
or *Naucerus*; (b) by the Ita- b Vide l. semper  
de iur. immuni-  
ta. & l. 3. C. de  
navicular. Vide  
Vegetium de  
re militar. lians, *Patrono*. But if the  
ship be a warfaring ship, the  
principal person is common-  
ly called Captaine by us and  
other neere nations. The  
next to the Master, is hee  
who directs the ship in the  
course of her voyage, called  
by the French-men, Pilot;  
by Vs and the Dutche,  
Steersman; by the Romans,  
*Gubernator*; (c) by the Italians, c Vide leges na-  
vales Rhodior.  
d il consolato. *Nochiero*, (d) *Pilotto*, & *Nau-*  
*archus*, as *Gerretus* writes.

F

The

e Vide dd. 11.  
navales. &  
Plautum in  
rudentic.

The third person is commonly called the Masters mate or companion, chiefly if the Master be Steersman himselfe: this man is called by the Grecians and Romans *Proreta*: (e) his charge is to command all before the mast.

f Vide dd. 11.  
Jelec. Rhed.

The fourth person is hee who attends upon the mending of the faulty parts in the ship, called by us and the Dutches, Timberman or Shipwright; by the old Grecians and Romans, *Naupagus* or *Naupagus*: (f) but by the late Grecians, *Calaphates*: for which cause the Emperor  
Micha-

Michael was called *Calapbates*, because his father had beene a Shipwright in *Paphlagonia*; as witnesseth *Egnatius* and *Volateranus*, \* \* Lib. 23: and therefore the Venetians and Italians name their Timberman *Calafatte*. (g)

g Vide il com-  
fola.

The next person in order, is hee who beares the charge of the shippes boat, called by us Boatsman; by the Italians, *Barchierie*; by the Grecians and Romanes, *Carabita*: for *Carabus* notes the boat of the ship. (b)

h Vide dd 12.  
Seles,

The sixth person requisite in any shippe of great bur-  
F 2 then,

i Vide il con-  
sol.

then, is a Clerke; by the Ita-  
lians, *Scrivano*, (i) whose of-  
fice is to write up and make  
account of all things recei-  
ved or delivered in the ship,  
together with all the ordina-  
ry and needfull expenses  
made upon ship & kippage:  
who for his more faithfull  
discharge, should at his en-  
try be sworne before the or-  
dinary Sea-Iudge; as is ordi-  
narily practised in *Ancona*,  
and other parts of *Italy*. (k)

k Ferretus de re  
& iure navali.

The seventh is the Cook,  
a most necessary member as  
long as there will be bellies.

The eighth is the ships  
boy, who keepes her conti-  
nually



nually in harbours; called therefore by the Grecians, *Nauphylakes*; by the Romans, *Dietarius*; (l) and by the Italians, *Guardiano*. (m) All the forelaids are distinct in offices and names, and therefore accordingly should also be distinguished in hyres and fees, after the custome of the Country. The rest of the persons of the kippage, are under the common stile of mariners, which the Romans call *Nautas*: but they name those of the lowest and base degree, as may bee the boyes and prentises in ship, *Mesonauta*, (n)

Il. 1. parag 2.  
naut. caup.  
m Il consolaro.

n Vide Budam  
ad l. 1. naut.

and Nautebatæ, as who  
 should bee ready at com-  
 mand, to climbe upon the  
 tewes, or to such common  
 service in the ship. (o)

o *Vide l. debet.*  
*parag. hac alho.*  
*mont. camp.*

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*Tit.*

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TIT. VII.

*The fraughting of Ships.*

**N**O Shippe should be  
 fraughted without a  
 charter-partie written  
 and subscribed, (a) contain- all naval.  
rhod. select.  
art, 20.  
 ing both the Master and  
 Merchant, and the name of  
 the Ship, that no doubt may  
 arise; (b) and likewise, that  
 the Master shall finde a suffi- b vide Bartol.  
in l quon rerum.  
parag. Si navem.  
de leg 1. argu-  
mento l. Labeo  
de Sipel legit.  
et c.  
 cient Steersman, Timberman,  
 Shipman, and Mariners  
 convenient, Shippe-tycht,  
 masts, sayles, tewes, strong

anchors, and boat fit for the ship, with fire, water, and salt, on his own expences. (c) And this charter partie, among all the westernne Merchants, and those of the great Ocean, usually is made to performe all things requisite by the lawes of Oleron. (d)

And if there be no Writing, but an Earnest, then the Merchant, if hee repent or rew, loseth his Earnest: but the Skipper, if he repent, loseth the double of the earnest or arles (e)

If the ship be not ready at the day appointed in the charter party to goe to sea, the

c Cap. 17. &  
130. art. Iacob.  
3. Vide de ll.  
Rhod.

d d. art. 20.

e Art. 19. ll.  
naval. Rhod.

the Merchant may not one-  
ly free himselfe of her, \*ex- \* Per legem  
item parag. Si  
in lege loca.

cept he hold his peace and  
discharge her not (for then  
by his silence he appeares to  
consent of new) but also shal  
or may obtaine all charges,  
scathes and interest: (f) Ex- f Oleron.

cept the Master shew some  
excuse of a notorious neces-  
sitie, or of a chance that  
could not bee eschewed:  
and then hee loseth onely  
his fraught, because hee

hath not deserved it. (g) g Per l. si, ex  
condutto, &  
l. si item fundus,  
& l. hac distin-  
ctio & d. l. si in  
lege loca.  
h d. l. ex condu-  
cto.  
But if the fault be in the Mer-  
chant, (h) he shall pay the  
Skipper and shippes dam-  
mage, or according to the

Rho-

*i. Art. 1. §. legem  
navalicum.*

*k. Art. 29. cod.*

*m. d. l. §. in lege,  
& l. ult. ad  
l. rhod. & d. l.  
ex conducto.*

Rhodian law, shall entertain the kippage and company tenne dayes; and if then he stay longer, shall pay the freight of all accordingly: (i) and further, shall upset all hurt and damage hapning by fire, water, or otherwise, after the time appointed. (k)

It is true, that the Rhodians charge the Merchant in this case onely with halfe freight, & the Skipper with the whole freight if he faile: albeit that the Romans inflict the pain of the whole freight upon the Merchant: (m) specially, if hee take forth his goods againe; for

for then is the fraught  
thought to be deserved. (n) *n l. ult. locat.*

But if the ship in her voy-  
age become unable with-  
out the Masters fault, or  
that the Master or Ship bee  
arrested by some Magistrate  
in her way, the Master may  
either mend his shippe, or  
fraught another: but in case  
the Merchant agree not ther-  
unto, then the Master shall  
at least obtaine his fraught,  
so farre as he hath deserved  
it. (o)

*o Oleron, & l.  
ult. ad. Rbed.*

For otherwise, except the  
Merchant consent, or  
necessitie constrain the Skip-  
per, to put the goods in  
ano-

*pd. lult.*

another ship worse than his owne, the Master is holden for all losses and damage, except that both the ships perish that voyage, and that no fault nor fraud be found with the Master. (p) Also it is recounted for a fault, if the Master put forth the ship to sea, either without a skilful Pilot, or without sufficient furniture & necessaries, according to the clause ordinary of charter parties, or that the other ship in which the goods were last put in, be not sufficient, or that the Master hazard forth to sea in an unlikely time. (q)

*qd. l. item.*

Yea,



Yea, in former times it was forbidden expressely, as by the Emperours *Gratian*, *Theodosius*, and *Valentinian*, to hazard upon sea from November till Aprill (r) As also by the Kings of Scotland, from S. Iudes day till Candlemas (s) And alwaies it is accounted by the lawes for a fault, to make forth of a Port in time of a manifest storme. (t)

Item, if a Skipper set forth his ship for a certain charge, and then takes in any more, he ought to lose his fraught justly. (u)

And in such a case, when goods bee cast through storme,

r l. 3. de nauif.  
c. Theodos. et  
l. 3. de nauif. c.  
Jallin. lib. 11.  
s U. de act. par.

r l. utiq. parag.  
fin. & l. qui  
petitorio. parag.  
fin. de vend. l.  
item queritor.  
sect. p. nauicula-  
rius. c. locat &  
l. ut. de nau-  
frag.

u la rouda  
Oleron.

storme, it shall not be made good by any contribution, but by the Skipper his owne purse. (x) And if hee overburden the ship above the birth marke, he shall pay a fine. (y)

x art. 25 l. g.  
naval. 1801.

y Denmarke.

Item, if a Ship Port at any other Port then she was fraughted to, against the Masters will, as by storm, or some force; then the goods shall be transported to the port conditioned, on the Skippers charges: but this thing also must be tried by the oath of the Skipper and two of his Mariners: (z) or else the Skipper may bee in fur-

z Oleron.

further danger.

Where also it is to be observed, that for the in-going to sundry divers ports by the way, imports not a diversitie or a multiplication of voyages \*

But if any man compell the Skipper to overburden ship or boat, he may be therefore accused criminally, and pay the damage happening thereby. (a)

\* DD. in l. qui  
romæ parag.  
Callimachus.  
de verb oblig.

Item, if any Skipper set his ship to an unfree man, and not of substance, and other qualities prescribed by king James the third, (b) hee and his Mariners shall under-lie the

a l. unica C. ne  
quidoner pub.  
lib. 11.

b c. 17 & c. 137  
act. x. lat. 3.

the paines contained therein.

Item, if a Merchant put in more goods in ship than was conditioned, then may the Skipper take what fraught he please. (c)

*et consulato  
del mare.*

It is imputed for a fault to the Master, if he direct his course by waies either dangerous through Pirats, enemies, or other evill adventures, and holds not forth his due rout, (d) and damage happen theréby.

*d. l. per. parag.  
si navis. loc. &  
l. si pecuniam.  
de cond. indeb.  
& l. qui fiscalis  
C. de navicul.  
lib. 11. & l.  
quoniam pro-  
nomas de sent.  
foer.*

It is likewise counted a fault, if the Master carry the pensell or flagge of other Nations than his owne, and thereby incurres scath and losse

losse of any thing. (e) For, as <sup>e Per l. quare  
proponas. ad l.  
rhod.</sup>

packquets, pipes, hogsheads,

and such like, should be  
marked by the proper marks

of the Merchants to whom  
they appertaine: (f) even so <sup>f Per l. i. c. de  
navib. non ex-  
cus & l. minime  
de espiſc. audien.</sup>

should ships be discerned  
one from another, by their  
owne pensell or flagge  
Item, if coffers, pipes,  
pakquets, &c. be delivered  
close and sealed, and after-  
ward shall be received open  
and loose, the Master is to be  
charged therefore, untill a  
due tryall and consideration  
of that matter. (g)

<sup>g Batr. in l. in  
actionib. in fin.  
de in lit. iurand.  
& in l. unic.  
fuit. advers.  
nant.</sup>

The Master also must be an-

G

swear-

swerable, for that harme  
which the rats for want of  
a cat doe in the ship to any  
merchandise. (b)

h Per l. item  
que parag si  
Jullo. loc.

***Tit.***



TIT. VIII.

*Of the Master of the Ship, his  
power, and duty thereunto  
belonging.*

**T**He Master of the ship  
is hee to whom the  
whole power and  
charge of the ship is com-  
mitted: (a) which power is a l. i. de exer-  
cit. act. prescribed, partly by the  
owner or outreader, and  
partly by the common law  
of the sea: as, to set her forth  
for fraught; to take in pas-  
sengers; to mend and furnish

b d. l. i

c Oleron.

the ship. (b) And to that effect, if need be, in a strange countrey to borrow money with advise of the kippage or company, (c) upon some of the tackle, or to sell some of the Merchants goods; provided, that the highest price that the rest of the goods is sold for at the market, be repayed to the Merchant: which being done, the fraught of that goods so sold and repayed, shall be repayed by the Master to the owner of the ship, as well as the fraught of the rest of the Merchants goods, except the ship perish in the voyage;  
in



in which case onely the price  
that the sold goods were  
bought for, shall be rendered: (d) And for no other <sup>d End.</sup>  
cause, no not in the chance  
of shipwracke, may the  
Master take on or conquest  
money, specially, by selling  
of Merchants goods. (e) And <sup>e End.</sup>  
thus far cōcerning his power

As for the Masters duty, he  
ought first before he loose  
or make saile, to seeke and  
obtaine the consent of the  
most part of the kippage or  
company; yea, if hee be not  
very skilfull, he should doe  
no other thing of impor-  
tance without their advise:

otherwise, hee shall under-  
goe what-ever dammage  
happens by his doings; (f) and  
specially if he loose forth of  
any harbour without an ex-  
pert Pilot, (g) yea, or in the  
harbour the ship happen to  
fall over. (h)

And as the Skipper his  
rashnesse and unskilfulnesse  
is thus-wise corrected: even  
so his negligence and sloth  
is to be punished. As first, by  
suffering the overlap and  
cowbridge to be unticht, (i)  
or the pumpe to be faultie,  
or a sufficient decking to be  
lacking; (k) and specially,  
from corn, victuall, and such  
like

f Eod.

g l. item Magi-  
ster locat.

h Oleron.

i Denmarke.

k Leges naval.  
Rhod. art. II.

like goods, which should be most carefully kept, and fenced from water and spoyling. (l) Otherwise, the negligent Skipper is holden to make good all scath or damage comming thereby, beside that the fraught of such spoiled goods is lost; except that (m) the ship or crear was open from the beginning, and fraughted without any overlap: (n) which two kindes of ships, are tearmed by the Iuriconsult, *Empbraeta* & *Rephraeta*. (nn)

*l Eod. art. 38.*

*m Art. 44. eod.*

*n Videt. x. par. rag. quædam de exercit.*

*n n d. l. i par. quædam.*

Further, this duty is required of the Master, that according to the Act made by

King *James* the third of *Scotland*, he give up the names of all persons transported in his ship, before he make saile: (n)

nc. 27. after. per  
lac. 3 & l' Ad-  
miral de France.

As likewise at his return, the just Inventarie of the goods of any persons which shall happen to depart this life in that voyage; (o) to the end, that not onely the lieges at home, nearest to the dead, may succeed to their right: but also concerning strangers so deceased, and their goods, that the same may be put in sure keeping, forthcomming for three yeeres space; but by the custome of *England*, one yeare, untill the

o L' Admirall.

the nearest of the dead-mans kinne come and claime the same. (p) Of which goods <sup>p'li conso'at. del mar.</sup> in the meane time, the bedding with the pertiments thereof, may be of due taken by the Master and his mate, to their uses; as also such cloathing, and other thing then presently upon that persons body, may be delivered to the boatsman and servants of the ship, as who ought therefore to burie, or cure at least, the over-putting of the dead in the Sea. (q) <sup>q Eod.</sup>



## TIT. IX.

*Of the Masters duty to the  
Merchant and Passenger; and  
of his privileges.*

**T**He Master ought to render againe whatever he receives within his ship, to him who delivered the same, as well vi-  
tuall as clothing and mer-  
chandile, goods, or other  
thing: *a* where we take goods  
to be delivered, if either it be  
put in the ship, or in pre-  
sence

*a T. T. naut.  
caus.*

sence of the Master or Clerk  
as his deputie, layd to the  
ships side, (b) and both bl. 1. in fin.  
eodem.  
wayes, the perill to appertain  
to the Master. (c) cl. 3. eod.

Which thing also is ex-  
tended to boatmen, and to  
the Ferryers: (d) and yet is it  
surest to deliver goods before  
witness, and that either to  
the Master, Clerke, or Skip-  
per his deputies thereto: (e) c. Art. 12 ll.  
navaliū.  
for the master is not holden  
for such things as are put in  
ship without his, and his  
companies knowledge; (f) t. l. 1. depositi.  
because where men are  
found ignorant, they are al-  
so esteemed not to consent.

But

f *Eod.* art. 33.

But if the Merchant or Passenger keepe his goods by himselfe, as money or such thing in his coffers, and then alledge the lacke thereof, then is the Skipper and his kippage onely to purge themselves by their oath: (f) but if afterward notwithstanding they be found guilty, the denyer shall pay the double, and also be punished for perjurie. (g)

g *Art.* 14. *cod.*

Even so, the Master is lyable for all damage sustained through evill hooks, cordels, blocks or lines; namely, if the mariner forshew the said things to be faulty:



faulty: and alwaies the mariners shall help the Skipper in common to pay the said damage. (b)

*h Oleron.*

Item, if any scath or damage happen to the Merchant or Passengers goods, through unreasonable stowing or breaking up, the master shall not onely refund or make good the same, but also lose his freight, and twenty pound in Scotland to the

King, (i) or his Admirall as *i Eod. & c. 17. & c. 130. ad h. Iacob. 3.*

his successor now; and for lacke of prooffe in this case, the Skipper and his kippage shall be put to their oath. (k) *k Oleron.*

Further, what ever shall hapé through

through fault, negligence or chance eschewable, or by the deed of passengers and others than himselfe or his kippage, the Skipper is holden to answer and pay for all, to the uttermost penny: (l) for if such dammage happen by a mariner, the Skipper shall refound the double, (m) but hee may re-  
 pett it from the mariner. (n)  
 But it is not so if the damage bee done by a mariner to another, except he be a Merchant also, or by a Merchant or Passenger to one another, then shall not the double be sought of the  
 ma-

*l d. l. in fin. &  
 l si vendita de  
 peric. rei. vend.  
 & l. 5. & 6.  
 naut. caup.  
 m d. l. 6. & l. 7.  
 end.  
 n l. l. 7.*

master. (o) Neither yet is the master holden for anything without the ship, or yet within the same, if he duely forewarn each man to keepe his owne goods, and they agree thereunto. (p)

*o Vide d.l. 7 & l. unic. furt. ad nau. camp.*

Such is the force of due protestation, according to the opinions of the most famous Doctors; (q) which conditions aforesaid, are most justly layd upon the master, because he ought to hire good men, and no evill person in his company: (r) for it is in his owne free will to chuse his company, and he should not be ignorant of

*p l. fin. nau. camp. & per l. itaque de ed. edict.*

*q Bartol. & Iason in l. non solum parag. mortem. de nou oper. nau.*

*r Instit. de ob. que ex delict. parag. fin.*

the

*al. quicunq; alio.  
de reg. iur.*

the men he hath to doe  
with; (/) otherwise, if the ma-  
ster were not so obliged to  
all such duties and diligence  
for the Merchant & Passen-  
ger, there should be great  
occasion of stealth & spoile. *t*

*l. i. in fin. nau.  
caus.*

Lastly, if through the Ma-  
sters fault, confiscation, or  
other damage happes, as for  
non-payment of the custom,  
or false bills of the goods cu-  
stomable, or for transporting  
of unlawfull goods, the Ma-  
ster shall refund the same  
with the interest. *(u)*

*u Secund. fin. l. ult.  
ad l. Rhed. & l.  
quum proponas  
c. de nau. fca.  
not.*

But concerning the pur-  
suits of these aforesaid, as  
the Merchant may wel pur-  
sue

sue for the spoyled goods  
onely: (x) even so may the  
Master pursue the stolen  
goods; as he who must one-  
x Accursius in  
l. s. naut. cap. 3.  
per l. melia ad l.  
aq.

ly, at least, chiefly, answer  
therefore. (y) And yet for all  
this, in case for want of these  
y Per. l. inaque  
de furtis.

things, which the Merchant  
at the fraughting promised  
to be done at the entry to the  
voyage, any of the aforesaid  
losses happens, and there-  
with the Master and foure  
mariners sweare no fault to  
have been in them, the Ma-  
ster shall goe free. (z)

z La ycol d'O-  
leron,

And yet must we not over-  
passe this observation, that  
if the Master offer the just

custom, anchorage, or whatever other duty pertaines to any Customers, and he, because of their unrighteous refusall, makes saile, the weather and his necessity so requiring, then may he be justly defended afterward against that Customer. (a)

*a Per l. quante:  
de pub.*

Neither yet should a ship that hath once paid her anchorages, pay againe, if she be forc't through tempest backe to the same Port. (b)

*b Per l. fin. parag. si propter  
necessitatem eod.*

*Tit.*



TIT. X.

*The Masters duty to the  
Mariner.*

**S**Eeing the Master is the  
Ordinary ruler over his  
owne kippage or com-  
pany, he ought to keepe  
them in peace so long as they  
eate his bread. (a) And if a- a Oleron.  
ny mariner hap to be hurt  
in doing service, or by his  
companion, the Master shall  
cause him to be healed,  
as he who is onely answer-  
able for the fact of all with-  
in ship-boord; (b) and then by

H 2

his

6 Per. l. 1. de  
exerc. act. c. 2.  
fin. naus. cap.

*c Art. 5. ll. usual.*

*d Art. 6. ced.*

his authority, repeat or recover from the other mariner, the charges, with all that is lost to the hurt man thereby: except that he who is hurt or lamed, have provoked the other by evident invasion, assault, or strokes. (d)

And if a mariner become sick, the Skipper shall cause him to be layd in a house, with all sustentation necessary and usuall in the ship, but shall not stay the ship untill he be healed; and when he recovers health, shall give him his hire: or if he dye, shall give it to the wife or nearest friends. (e) But if a mariner

*e Per. l. ult. ad l. Rhod.*



mariner be not hurt in the ships service, the Skipper shall hire another in his place; who if he draw more hyre, then that mariner shall refound the superplus. *f* And *Olcrum.* alwaies the Master ought to léd his mariners if they lack *g* *Eod.*

Item, if through the Masters fault, the ships boat perish with any mariners in it, as through spoyld tews, &c. then shal the Master pay one whole yeeres hyre to the heires of the drowned: *(b)* *b Art 46. d. naval.*

Item, he ought to give his mariners, flesh upon Son-day, Tuesday, and Thursday; and upon other dayes,

H 3 fish,

*in consolato.*

fish; or such like, with sufficient drinke: but no meate to them that sleepe not in the ship. (i) And yet the quality and quantity of mariners food and hyres, goeth diversly, according to the divers customes of Countries, and the conditions made at the entry to their voyage.

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*Tit.*



TIT. XI.

*Of the duties and priviledges  
of Mariners.*

**M**Ariners owe all due obedience to the Master, not onely in flying from him in his wrath so farreas they can, but also in suffering; yet may they after one stroake defend themselves. In case of rebellion of mariners against their master, which is thought then to be done, when the

Master hath thrise lifted the Towell from before any mariner, and yet he submits not himfelfe, then may he not onely be commanded forth of the ship at the first land, but also if he make open strife and debate against the master, hee shall lose his halfe hire, with all the goods he hath within ship-boord. *a*

*a Oleron, & il  
consolato.*

But if in this strife a mariner useth any armour or weapons, then should the rest of the mariners binde him, prison him, and present him to justice; so that if any of them refuse to lay to his hand, and to assist, he shall

shall lose his hire, with all that he hath within shippe-board. (b) Yea in case any number of the mariners would conspire to force the Skipper to passe to any other Port, than to the which he was fraughted, then may they be accused criminally, and punished, as for a capital crime. (c)

*b Il consolato.  
cap. 160.*

*c Denmarke.*

And yet, if a rebellious mariner repent in time, and offer amends for a simple rebellion, and the Skipper notwithstanding refuse; he may follow the ship, and obtain his hire. (d)

*d Oleron.*

Mariners ought each one to  
helpe

helpe and assist others on the sea: or else he that refuseth, loseth his hire; and the oath of his fellowes shall be a prooffe against him. (e)

e *Estimo.*

Mariners in a strange Port, should not leave the ship without the masters licence, or fastning her with foure tewes; or else the losse lights upon them. They should also await upon the ship untill she be discharged, and ballasted new, (f) and the tackle taken downe.

f *Denmark.*  
*Oleros.*

And if a mariner, in time of loosing and lading, labour not with the rest of the company, but goes idle and absents

sents himselfe, he shall pay a fine to the rest, *pro rata*, at the Masters discretion. (g) <sup>g Denmark.</sup>

At least, the halfe of the kippage or company, ought in strange country port or roade to stay aboard: and the rest who goe a-land, albeit with licence, should keepe sobriety, and abstaine from suspected places, or else should be punished in body and purse, like as hee who absents himselfe when the ship is ready to saile. (h) <sup>h Denmark.</sup>

Yea, if he give out himselfe for worthier than he is in his calling, he shall lose his hire, halfe to the Admirall, and

*i Eodem.**k Eodem.**l Oleron.**m Eodem.**n Eodem.*

and the other half to the master: (i) but this especially ought to be executed against an unworthy Pilot. (k) The mariner also forfeits his hire if the ship breake in any part, & he help not with al his diligence to save the goods. (l)

If it chance any otherwise than well to the Master, the mariners are then holden to bring backe the ship to the port from whence she was fraughted, without delay, (m) except it be otherwise provided.

A mariner may carry as much meat forth of the ship as he may eate at a meale, but no drink. (n) A



A mariner may either keep his portage in his own hand, or put forth the same for fraught: and yet should not the ship stay upon the preparation for his portage. (o) So <sup>o Eodem.</sup> that in case the ship be fully laden before the goods for his portage be brought in, he shall have the just fraught of so much goods. (p) <sup>p Il conselars.</sup>

If a ship passe further than the mariner was hired, his hire should be accordingly augmented; except he be hired, as the French man speakes, *à mareages, mais non à deniers.* (q) If <sup>q Oleron.</sup> a Mariner runne away with

with his hire undeserved, he deserves the gallowses. (r)

r Denmark &  
Oleron.

If a mariner be hired for a simple mariner, and afterward in the voyage findes hiring to be a Pilot or a Master, he may passe with provision to render his former hire: evē so is it if he mary. (s)

s Eodem.

Mariners are not onely holden to loose and deliver goods over-board; but also if no Porters nor Caryers be in those parts, to carry the same themselves, for such hire as other workmen should have had therfore. (t)

t Il consolato  
del mare.

If it happen a ship to be prized for debt or otherwise

wise to be forfeited, yet should the mariners hire be paid; and if she prosper, to receive their pay in the same money that the fraught is paid with. (u)

u Eodem.

Lastly, a mariner should neither be arrested nor taken forth of a ship making to saile, for any debt (but onely his hire, and as much other goods as he hath in the ship arrested therefore, according to the quantitie of the debt, and the master to be answerable for all : (x) because the ship is compared to a mans dwelling house; (y) and by the Civill law, a mans dwell-

x Oleron. Den-  
marke. Kintor.

y Bald. in l. cer-  
tioris. loc.

z l. nemo. de  
reg. iur. & l.  
plernque. de in  
ius voc.

dwelling house is his most  
sure refuge) (z) except for a  
sworne debt, or a penalty to  
the King through some  
crime.

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*Tit.*

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TIT. XII.

*Of the Clerke of the ship.*

**I**N ships of great bulk and burden, a Clerke is most needfull: who being put in by men of chiefe power, and sworne solemnly before some Iudge, as the use is in Italie (or at least before owners and mariners) that he shall write nothing but the truth, nor leave ought unwritten; being, I say, so constitute, neither Merchant nor mariner may  
I put

put in or take out any thing of the ship without his knowledge. So that whatso-  
ever goods or other thing shall happen through storme or otherwise, to be cast, stolen, or spoyled, that hath not beene presented or shewne to the Clerke, it shall no way be up-set by contribution, or any search made therefore. And if it come safe to land, the Skipper may take what fraught he likes therefore. Also the Clerke may take of that which is delivered to him, and sell thereof for the ships need, but must satisfie the owner there.

thereof: for he must be al-  
waies countable of his re-  
ceits: (a) But howsoever he <sup>a Il consolato.</sup>  
doe, he may neither take in,  
nor give forth goods by  
night, but in day light. (b) <sup>b L'Admiral  
de France.</sup>  
*Vide statuta Ang.*

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## TIT. XIII.

*Of a Pilot or Steir/man.*

**I**F a Master hire a Steirf-man not only for to guide his ship in through shalds or other dangers at a time onely, but also for a whole voyage, and to be ready therefore against a certaine day, and he faile to keepe that day, he shall not onely pay Master and Merchants damage or stay, but also the fraught that is lost thereby: except sicknes, or some very law-



lawfull excuse qualifie it. (a)

*a Oleron, &  
arg. l. ult. ad l.  
rhod.*

A Steirsmān, after the time he hath brought the shippe in sure harbour, is no further bound or liable; for then should the Master see to her bed and her lying, and beare all the rest of the burden, charge, and danger: so that if before she come into the Port or some safety, eyther she or goods perish or be spoiled, the Pilot makes good the same: yea, if his fault or ignorance be so grosse, that the company sees any manifest and present wracke to all thereby, then may they leade him to the hatches and

b Oleron & il  
consolat.

strike off his head. (b) Yea,  
if without any seeing dan-  
ger, certaine of the skilfullst  
mariners deeme that he is  
not so skilfull as he set him-  
selfe forth to be, then shall  
he both lose his hire, and  
double the same to the Ad-  
mirall and Master, or else  
passe thrise under the ships  
keil. (c)

c Denmark.

*Tit.*



TIT. XIV.

*Of money lent to Sea, called  
Nauticum fœnus.*

**G**REAT is the difference,  
or at least should be  
betwixt money lent  
amongst men, to use on land,  
and that money which is  
lent to Sea; for this money  
is called *pecunia Traiectitia*,  
because that upon the ha-  
zard of the lender it is carri-  
ed over Sea. So that if the  
shippe perish, or that all be  
spoiled, the money loses to

a L. 1. de fœn.  
naut.

the lender. (a) But on the contrary, money on land is delivered on the perill of the borrower: so that the profit of this, is the price of the onely simple loane; therefore generally called *usura*: but the profit of the other loane is called *usura maritima*, or *fœnus nauticum*, which is not the price of the loane, but of the hazard and danger which the lender takes upon him during the loane: (b) which is understood to be to a certaine day or voyage, or what-ever of time agreed upon. And therefore if the money miscarry,

b L. periculi.  
cod.

carry, eyther before the voyage begun, or after the tearme appointed for the full loane; then the perill pertaines to the borrower thereof, and not to the lender: (c) I meane of perils proceeding from stormes, violence, spoyle or such like occasions, which cannot be eschued by any diligence of the borrower; and therefore in case the borrower imploy the lent money upon lawfull goods, or that by his defrauding of the due customes, the same be confiscated, the lender is freed of such hazards. (d) It is also

*c Vide passim  
ad. l. de sen.  
naut. & ad. l.  
naval. l. bod.*

*ad. l. 3. c. de  
sen. naut.*

to

to be noted, that mony lent upon the Sea, without hazard, and yet with security, should pay no profit, suppose it were unbooked in the Clerks book with the profit; contrary to that which is lent on land: (*e*) so that albeit money be lent within the ship during the voyage, to the need of the company; and if before the day appointed for the rendring, shipwracke or spoyle happen, then should the losse come in contribution betweene them; (*f*) because if that money had been lying by the lender, still unlent, it had bin in common danger

*e* Art. 15. & 16  
*Leg. naval.*

*f* Art. 17. *cod.*

danger of shipwreck or spoil with the rest. But if the time appointed were past with the hazards aforesaid, then shall the borrower repay the borrowed money, free from all contribution. (g)

*gd. art. 17.*

Further, in case the borrower deteines any such lent mony as is aforesaid, beyond the terme appointed for the repaying, he shall at his returne not onely pay the profit agreed upon before the voyage, but also augment the same according to the greater time, and yet shal not pay the profit of that first condition, but onely after the common rate. (b)

*Tit.* *h Art. 18. cod.*



## TIT. XV.

*Of the Outreaders, or Outriggers, Furnishers, Hyrers, and of the Owners of Ships, and of actions for and against them.*

**I**T is not onely permitted to him who contracts with the Master of a ship, or that hath any other action or claime against him as Master of the ship, to pursue him; but also the out-reader, setter, or exercitor thereof, as him who placed the Master; and therefore ought



ought to make good the  
Masters deed and fact. (a)

*a Parag. exerci-  
tor. iust. de ob. &  
ex quasi delict. &  
T. T. naut. caup.*

This outreader we take to  
be him to whom the com-

modity of the ship (b) re-

*b eod. ibid.*

dounds; so that he may lay  
his action upon any of them;

*Ne in plures adversarios distra-  
hatur qui cum uno tantum con-  
traxit. (c)*

*c d. l. 1. 2. & 3.  
eod.*

But the rest of the owners  
or outreaders shal relieve this  
man *pro rata* of their portio's;  
except the handling of the  
ship be so severally divided a-  
mongst them: or that the  
Master have not his po-  
wer and commission of  
them all: (d) or that the master

*d l. 4. in prim.  
eod.*

have

have obliged himselfe beyond his commission; as if he have taken on money to mend the ship, when as she needs it not: or that he have no commission at all; in which case the lender hath to blame his owne folly: for by the common rule of Law, men should know well the persons and their conditions, with whom they have to bargain. (e) And yet in case evident need be of mending, and money be lent thereto; suppose the Master should spend it otherwise, yet ought the outreader to satisfie the

*e d. l. i. & l. qui  
cum aliode reg.  
iur.*

the creditor. (f) But above <sup>f l. ult. de exor. att.</sup> all, that money which is lent for victuals to the ships company, should be repayed, as preferd before all other sort of debts. (ff) But <sup>ff Per L. interdum. cum seq. Qui prior in pig.</sup> a Merchant contracting with a Mariner that is not a Master, shall have no action against the outreader, except for a fault done by the Mariner, specially, if he hath beene hyred and put in by the outreader.

Againe, albeit by the common law of the Sea the outreaders may not pursue persons obliged to the Skipper, yet are they permitted to pur-

pursue upon the Masters  
 contract, as they had bin  
 g *Passim. d. l. 1.* contracters principall; g) be-  
 cause in such dealings he su-  
 staines the outreaders person;  
 and because of the great  
 common-wealth that is pro-  
 cured by this kinde of traf-  
 fique, (h) worthily such pri-  
 viledges to the outreaders  
 and exercers of shipping  
 are granted. And yet is not  
 the Master alwaies bound to  
 satisfie all counts to the out-  
 readers: specially, in case it  
 happen some passengers to  
 be *Non solvendo*, the Master  
 is not holden to pay for  
 them, because it becomes

h) *d. l. 1. parag.*  
 10.

not

not the Master, in the accep-  
tation of Passengers, to  
search out so narrowly their  
meanes and ability. (i)

i L. 2. sect. 6. d.  
l. Rhed.

And againe, the outrea-  
der is not holden alwayes to  
answer for the Masters  
floath, but for his owne  
selfe. (k)

k Oleron;

K

Tit.



## TIT. XVI.

*Of sundry Partners of Ships,  
and their discords.*

**M**oreover, concerning the owners of the ship, in case they cannot agree amongst themselves to remaine in Partnership; seeing by the law they cannot be constrained thereunto: (a) yea, not albeit a Pactiō had bin made never to sunder; (b) then is there many considerations required in their sundring. And first,

*al. fin. c. proso-  
tio. & pass. inst.  
& D. eod.*

*b L. in hoc pa.  
rag. si conveniat.  
pro soc.*

first, if their common Ship  
or Cray be put in building;  
or that she be but presently  
bought: in these cases it is  
thought convenient, that she  
shall be imployed one voy-  
age first, upon the common  
outread and hazard, before  
any of these Partners be  
heard to sunder & discharge  
their part. And after that, if  
they cannot agree, he who  
desires to be free, should of-  
fer to the rest, and set his  
part on such a price, as hee  
will eyther hold or sell, which  
if he will not doe, and yet  
refuses to outread with the  
rest, then may the rest rigge

forth the ship at their owne charges, and also upon the hazard of the wilfull refuser, so farre as his part extends, without any count to him of any deale or part of profit at her returne: (c) but they must bee bound to him to bring her home safe, or the value of his part.

And justly; because that, as shippes were invented in common, for the use of all men; even of them that dwell in the mountaines, as on the coasts of the sea: (d) so were they ordained and builded for sayling, and not to lye idle and

*c Denmark.  
cum ll. hic seq.*

*d l. arboribus  
parag. navis de  
usu fr.*



and unoccupied. (e) But if the persons, who have most part of the ship, refuse to abide in partnership with him who hath a small part, that neither hee can sell his part at that price, without great losse, nor yet is able for povertie to attaine to their parts, then are they all bound to put the ship to an appraisement. (f) Otherwise, the lcoffe which *Cassellius*, a Romane lawyer, used against two wilful partners of a ship, may also be used against such: that is to say, while they asked him by what way they might

e Glossa in l. si  
navis. & iuris.  
in l. utiq; para.  
culpa de rei.  
undic. & l. ar-  
borib. parag. na-  
vis. de usufruct.

f consolato.

divide and part their ship,  
*Casselius* answerd; If ye di-  
 vide her, then neither of you  
 shall have her. (g)

g *Macrobii*  
*lib. 2. c. 6.*

And if for lacke and want  
 of buyers in that place, the  
 poore partner can neither es-  
 chew the oppression of the  
 richer, nor yet the rich satil-  
 fie the poor man, perchance  
 also wilfull; then may the  
 Iudge ordinary deale and  
 decree in this case, as he may  
*In omnibus alijs bonæ fidei acti-*  
*onibus* : that is to say, consi-  
 der all the circumstances of  
 the persons, their motions,  
 the matter of their debate,  
 with all the merits thereof,  
 and

and make up a full consideration of all together, that every man may obtain and receive his own due right. *b*

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*h Secundum  
citata, & Se-  
cundum. l. bona  
fides. Deposit.*

K 4.

Tit.

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## TIT. XVII.

*Of Casting of goods in a voyage,  
and the like; and of Contribu-  
tion to be made there-  
fore.*

**C**Oncerning contribu-  
tion or scott and lot, as  
we speake, it is ordi-  
nary: and first, it is practised  
upon shippes so stormestead  
that for reliefe of lives and  
goods, casting of goods must  
be made: In that case the  
master shall consult with  
the mariners: who if they  
con-

consent not, & yet the storm  
and danger continue, then  
may the master cast some  
goods notwithstanding: (a) <sup>a Oleron.</sup>  
But if the merchāt be present,  
let him begin to cast, <sup>b Il consolato.</sup> & next  
the mariners: but if the mari-  
ner keep back any part that  
should be cast, to his own use,  
he shal render the double. (c) <sup>c Art 39 Il: ma-  
val. scilicet.</sup>

But when afterward the  
master shall come to land, he  
must with the most part of  
his company sweare that  
he did cast goods for no o-  
ther cause but for the safe-  
ty of shippe, goods, and  
lives (d) Secondly, when <sup>d Oleron.</sup>  
goods are cast, they shall be  
up-

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el. 1. & 2. ad l.  
rhod.

fd. l. 2. & oleron

3 cod.

upset and compenled by a contribution of Ship and such goods as are safe thereby: (e) and not onely of goods paying fraught and burdensome, but of cloathing, money, jewels, and such like, (f) which are not weighty.

For, it is most righteous, that the losse be common to all things which are safe thereby. (g) Except things borne upon a mans body, victuals and such like, put in ship to be spended, and therefore should not scott and lott, with other goods: in so much, that when they become

come scant and wanting,  
each man is bound to com-  
municate the same one to o-  
ther. (b)

*h d. 42.*

But here it may be asked,  
whether yet should all kinde  
of cast goods, be up-set and  
made good by contributi-  
on, as for example, the goods  
transported above the over-  
lap, and goods forbidden to  
be transported (i) Sure, if such  
goods happen to be the cause  
of any scathe and danger, the  
master who received the  
same within his ship, shall  
beare the losse and also be  
criminally pursued there-  
fore. (k)

*12. 17. & c. 130.  
act. Jacob. 3.*

*k Arg. l Vaie.  
C. ne quid oner.*

*public.*  
But

But if goods unadvisedly, without consent of the owner thereof, be cast out, on the sudden; then may he himselfe upon his conscience esteeme his owne goods to the just worth, because the company hath that way by their rash dealing, lost the priviledge they had to estimate that goods. (l)

1 Per. l. si fide.  
iussor. D. qui  
satisd. cog.

In like manner the ship geare and apparell wracked by storme, imports no more contribution, then if a workman breake or spoyle his work-tooles, or instruments in his ordinary work, (m) except in the avoyding of a dan-

m d. l. 2 & l.  
navis cod.



danger, as the helving the  
 maste over-boord, (n) or the n l. amissie. e-  
 ed. & Oléron.  
 slipping of a Tow-anchor or  
 boate upon just feare, or at  
 the desire of the Mer-  
 chants. (o) But that should o d. l. i. & il  
 consol. del. mar.  
 be alwayes proved by the  
 oaths of the ship-men: for  
 concerning all facts within  
 house or ship, credit must be  
 given to the domesticks and  
 company familiar. (p) Also p Per. l. consen-  
 su. C. de repud.  
 & l. quories.  
 C. de naufrag.  
 & c. veniens.  
 extr. de testib.  
 & c. 2. de pro-  
 bat.  
 if goods be put in without  
 the master and clerks know-  
 ledge; if they be cast, they  
 shall have no contribution. q q Il consolato  
 del mar.

Tit.



## TIT. 18.

*Of contribution for Pirates.*

**I**F ship or goods be redeemed from a Pirate, contribution shall be made therefore, by all; because the redemption is made for the safety of all. But if the Pirate be once Master of all, and yet take but some speciall goods, whether from ship or Merchant, and not as a contentation for the sparing of the rest, it should appeare in this case

case, that seeing the remnant  
is not safe hereby, but freely  
spared, that no contribution  
should be made for the taken  
goods. For oftentimes Pirats  
take but things at their plea-  
sure, and not of minde to  
spoyle. (a) Yet now adayes <sup>1. Vide lare. l.</sup>  
because this chance of taking <sup>2. ad l. rhod.</sup>  
at pleasure, concernes (in  
common judgement) the rest  
of the goods as subject to  
that same pleasure of the Pi-  
rat; therefore should it be al-  
so in common upset by all to  
whom that chance is com-  
mon.

Tit.



## TIT. XIX.

*Of contribution for spoyled and  
spilt goods.*

**I**F through the losing of  
any cast goods, or upon  
any needfull occasion, the  
remaining goods be spoyled  
either with wet, or other-  
wayes; a contribution shall  
be made, proportionable for  
so much as they are made  
worle. (a)

*a Vide L. navis  
q. ad. l. rhod.*

*Tit.*



TIT. XX.

*Of contribution for lightning  
and disburdening of ships for  
their easier entry to the Port,  
and for other chances.*

**I**F it be needfull to lighten  
a ship of her burden, for  
her easier entry to Port  
or channell, the two parts  
of the losse fall upon the  
goods, and the third part  
on the ship; except that the  
shippe surpasse in worth  
the loading, or that the  
charge of goods bee not  
L the

the cause of her inability to enter, but some bad quality proceeding of the ship it selfe: (a) Or that otherwayes it be provided in the charter-partie, that the goods shall be fully delivered at the Port covenanted and appointed; for then condition makes law: (b) In which case it is to be also observed, that if by occasion of lightning, the goods which are put in the boat or Lighter, perish, the ship and remaining goods in ship shall upset the same. But on the contrary, if the ship and remaining goods perish after the Lighter is  
once

a Oleron.

b L. 1. verse  
quod convenit.  
depos.

once safe, no contribution shall be set upon the goods in the Lighter: because the rule is constant, that onely then should goods be liable to contributions, when ship and goods come safe to Port. (c)

*c d. l. navis. & l. auxilia ad l. rhod.*

Item, contribution should be for the Pilots fee, that is taken in to guide her into an unknowne Port; (d) as also to raise the Ship off ground when the fault is not in the Master. (e)

*d Oleron.*

*e Eod.*

Even so if two ships rush and crosse one over another, and the company sweare their innocencie, as that it lay not in their power to stay

the same, contribution must be made for one equall upset of both their losses. (f)

*feod. & l. quem-  
admodum. pa-  
rag. si navis ca-  
l. Aquil.*

But not so if one of them perish; because of that mishap, there can be no due proportion of the losse: for if it were otherwise, a malicious Skipper, might of purpose set an old weake ship against a strong ship, in hope of some upset and recompence. And yet for redresse of the lost shippe, an action may be to the owner, against the negligent Master, or the Mariner who losed her, or cut her cable: (g) which action

*g d. l. quemad-  
modum. parag. si  
navis ad. l. Aquil*

is called *Legis Aquiliae*, for dam-



dammage and scathe done.  
And therefore if such a  
chance befall in the day  
light, by a ship under saile a-  
gainst a ship riding at anchor,  
then the Master of that sai-  
ling ship, shall make good  
the dammage or scathe of  
the other, to the extremity :  
and the like shall be done, if  
in the night the riding ship  
hold fire and light forth, or  
make any crying to fore-  
warn the other.

It also pertaines to this ar-  
gument, if some sort of  
goods, as salt, or corne, be  
laid on heap by divers part-  
ners, into a shippe without

*h Art. 3. 6. 11.  
naval. rhod.*

distinction, and that the Master deliver to any of them their due measure, and before the rest receive their measures, the remaining salt or corne, washes or looles, he that had the good luck to be first served, enjoys it fully without any contribution to the rest of the partners: (i) because when this goods was put into the ship, it was delivered to the master, *tanquam in creditum*; and so he is become owner, as of lent money: which men are not holden to render in the selfe same pieces, but in value or such like coyne; (k) except there

k Inst. in pr.  
 quib. mod. re  
 contrab. ob.  
 re. l. 2. si cert.  
 peti.

l. quod convenit  
 de verb. ob.

there be some other condition  
past before : which in all  
affaires maketh law. Neither  
can this be imputed for any  
fault to the master, because  
of necessity he behooveth to  
make delivery to one, first,  
before another. (m)

*m Vidd. l. in  
memore.*

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*L 4*

*Tit.*

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## TIT. XXI.

*Of the common manner of contribution, and execution thereof.*

**I**N setting of contribution or rates, things must be estimate in manner following.

First, the goods cast, spoiled, or rest; to the price they cost, if their chances did happen before midde voyage: but if after the midde voyage, then to the price, the rest of the same goods attain

taine to at the market ; be-  
cause there is here a confide-  
ration, rather of losse and  
scathe than of any gaine. (a)

*a l. 2. in fin. ad  
l. rhod. & il  
consolato.*

And because damage and  
losse should be drawne as it  
were in streite, and gaine  
and vantage spreadde forth  
and extend, according to  
*Harmenopolus* sentence; spoy-  
led and lost goods should  
bee set to the common  
worth, and not after mens

affections: (b) except one-  
ly in goods unadvisedly  
cast: wherein for the cor-  
rection of the rashnesse of  
the casters (as who thereby  
appeare to have amitted  
their

*b d. l. navis & l.  
pretia. ubi  
bartolus ad. l.  
7. C. de prog-  
militar. lib. 12.*

their owne priuiledge) the estimation of the goods is permitted to the conscience of the Merchant or owner thereof. (*c. Vide supratit. 17.*

*c. Pir. l. si fide-  
iussor. Quz.  
satisfd. cog.*

Secondly, concerning the Persons, whose losses are under contribution, he should first deale with the master, to retaine all the same goods on the bottome of the ship, in his keeping, untill the rate be set and executed: (*d*) or else may omit all other persons, and pursue the Skipper *ex conducto* : which also ceases, if the cast goods be found againe. (*e*)

*d. l. 2. ad l. rhod.*

*c. d. l. 2. in fin.*

Lastly, concerning the Ma-

Master of the Ship his privilege, it is not onely upon the detinew, and keeping of the goods and geere brought within his ship, which are thought as by a privie band to be obliged and given him in pledge for the fraught, by common consent of lawyers, but also for the due and timely satisfaction of such contributions; because the imposed taxation, as likewise the fraught, is thought to sticke firmly to the said goods: and therefore the Master may hold his hand thereon, untill satisfaction be made, (f) albeit that commonly

*El. i. de dol.  
mal. excep. &  
l. si non sortem.  
de cond. in de.*

monly the with-holding of  
other mens good be not al-  
lowed. (g)

g l. i. parag. ve-  
diguntur.  
D. quod vi  
aut clam.

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*Tit.*

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TIT. XXII.

*Of priviledged ships.*

**S**Hips or boats serving the Country, or the Prince, have great prerogatives. For first they goe free from all Imposts, Customs, and Arrestments, (a) not onely in forth-going, but also in their retorne, according to *Fredericke* the Emperour his constitution. (b) Yet if a Skipper serving the Prince or Countrey, wilfully falles on coastes and by-courses where

*a l. x. de navibus. c. lib. ix.*

*b Auth. us filius pro patre.*

*cl. 5. de navi-  
cular. C. lib. 11.*

*dl. ult. eod.*

where he should not, to their hurt and hinderance, he merits death: (c) and the commanders or officers in chiefe parts, who wittingly suffer such Skippers to lye and slugger, incurre a forfeiture of all their goods. (d)

And if any man shal force the Skipper of these or any other ships to take in more than his just charge, not onely should he upset all hurt and losse, but also be publicly punished. (e)

*e. Art. 49. ll.  
selectar. naval.*

And as these are the conditions of ships serving the Prince; so is it to be knowne that all sorts of ships are sub-  
ject

ject to this service, upon  
command: (f) otherwise in  
case they refuse, their ships  
shall be confiscat, except they  
report a testimony from the  
Admirall of very lawfull ex-  
cuse (g)

*t Vide Tit. de  
navib. non ex-  
cusand. C.*

*g de offic. admir.  
Ang.*

Yea, further is to be no-  
ted, that Masters of ships and  
Ferriers once so professed, are  
bound to serve as well sub-  
jects in common, as the  
Prince; (h) except they have  
left the trade, or be under a  
safe conduct, or have taken  
in moe, then they can well  
carry a ship-boord. (i)

*h Albericus ad-  
tit. naut. camps  
& ins. unic. furt.  
adver. naut.  
camp.*

*i Bart. & Bald.  
in d. l. unis.*

And this is a common  
priviledge to all sort of loa-  
ded

ded and burdened ships, to have the neereſt place to the ſhore, for their diſcharge and unloading; and therefore the ſhips lightened, to give them place. (k)

*k Wiſbie c. 10.*

Laſtly, even the perſons who build, purchaſe, or dreſſe ſhippes expreſly for a common-wealth to their Country, are accounted amongſt the priviledged: (l) yea the frequenters of ſayling are alſo priviledged in all Gourts. (m)

*l Qui navium  
de privileg.  
creditorum.*

*m C. Innocenti-  
us. de for. comp.*

*Tit.*



TIT. XXIII.

Concerning Shipwracke.

**S** Trangers incurring  
 shipwracke in Scotland,  
 should have the same  
 favour of us that we use to  
 receive of them in the like  
 case; *a* so that no confiscation  
 should be used against them,  
 except they use to doe so to  
 us, or that they be very Pi-  
 rats, or enemies to Christiani-  
 ty : *(b)* otherwise, who steals  
 any such miserable goods,  
 M shall

*a* 138. *aff. r.*  
*Iacob. 1.*

*b* L. I. C. de nau-  
 frag. & arb.  
*naufragia, C. de*  
*furt.*

c l. 2. in pr. de  
incend. ruin. l. in  
eum cum outh.  
seq. de furi.

shall pay foure-fold to the owner, if he be pursued within a yeere and a day; (c) and as much to the Prince or his Admirall: yea, the onely stealing of a naile, or the worth thereof, maketh the thiefe guilty of all, to the rendering of all the remaining goods. (d)

d l. 3. in fin. de  
incend ru. nauis.

Yea, by the Emperour *Antonius* his ordinance, this thiefe or robber of such goods should be battoned, and banisht for three yeares, if he be of any honest ranke; but if he be base of condition, should be sent scourged to the Gallies or metall mines.

mines. (e)

el. Pedius 4.  
cod.

And if any man should be so cruelly wicked, as to hinder the ship-broken men from helpe in danger, hee shall be recounted for a murder. (f)

f Arg. l. Saccu-  
larij de extra-  
ord. crim.

And therefore may no man hinder ships from forth-laying of Tewes & Anchors upon land: \* as was decided betwixt Couper and Seagy,

\* Gains l. 3. de  
rev. divis.

Anno 1498. mense Iulij, (g)

g Tom. 1. regis.  
Scot.

In like manner, if any man should be so accursed as to hold forth a Lanterne in the night, of intention to draw on ships to a danger, in place of a good port or har-

bour or safe roade, that wicked person should be punished to the death. (b)

h Per d. arg. l.  
Saccula. ii.

Yea, though no harme happen, yet may the Admirall punish him at his pleasure: (i) And therefore even

i Per l. to. de incend. ruin. nauis.

Fishers are forbidden to fish with light in the night; lest that Sailers thereby be deceived with the false shew of an

il l. ne piscatores eod.

harbour. (ii)

But for the better eschewing of these cruell evils, *Hadrian* the Emperour ordained, that all men having possessions on the coasts, should attend carefully upon such chances; otherwise, to be

an-



answerable for al things mis-  
sing by stealth or robbery. *k* k l. ne quid eod.  
& auth. naufr-  
gia. C. de furt.

Item, if no man in due  
time claime such a wracke, it  
fell of old to the Prince his  
customers, according to that  
of *Hermogenes* and *Fortuna-  
tianus*, (l) *Naufragia ad pub-  
licanos pertinent* ; but now-  
adays to the Admirall, by  
the Princes graunt.

But concerning the action  
for shipwracke, it should be  
intended within a yeere and  
a day, (m) and sped by the  
ludge within two yeere. (n) ml. si quis. C. de  
naufrag. lib 11.  
n V. de l. de  
Submersis. eod.

Where it is to be marked,  
that if the shippe onely pe-  
rish and the goods are safe, in

o Art. 37. leg.  
naval. Rhod.

p Art. 40. cod.

q Art. 39. cod.

r Art 37. cod.

that case the goods shall pay the fift or the tenth penny; according to the easie or difficult winning and saving of the said goods; (o) for gold, silk, silver, & such like things of easie transportation, should pay lesse than goods of greater weight and difficult transporting, as being in greater hazard: (p) except the Skipper carry - in his ship to a port or part where hee should not, nor the Merchant would not; for then is the Merchant free of all the Skippers losse, (q) and no way should upset the spoyled or broken ship. (r)

But

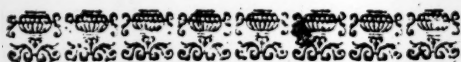
But in cases of wracke,  
the lawes of *England* are also  
to be seene: as, *Westm.* 1. 3.  
*E.* 1. *vid. prerog. regis* 12.

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M 4

Tit.

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## TIT. XXIV.

*Of things found upon the Sea, or  
within the floud-marke.*

**S**Hips, goods, or geare,  
or whatsoever other  
things found within the  
Sea or floud thereof, are of  
three sorts : as, either found  
on the streame floating, and  
then are called Floatson : or  
found on the Sea bottom, and  
drawne up from the same by  
Doukers and other meanes;  
and then are called Lagon :

or

or found on land, but within the Sea-floud, as cast forth there by storme and the water; and then are called Ietson.

Concerning Floatson and Ietson, whether things be cast up by shipwrack, or else left as lost through casting in stormes, the finders thereof, as some Lawyers thinke, (a) a Faber & alij inst. de ver. di-  
vis. si. et. pen. should doe therewith, as with other goods found upō land: that is, to proclaime the same to be forth-comming to the just owner; because the loier or tynner of such goods remaineth still ow- b per l. Pom-  
ponius. parag.  
fin. de acquir.  
ver. dom. ner and proprietar thereof: b  
and

c *Faber. d. pa-  
rag. pen.*

d *Art. 45. & 46  
Il. naval. Rhod.*

e *dd. mt.*

and if no man claime, the finder to keepe it to himselfe if he be poore. (c) But according to the old Rhodian law, whether the finder be rich or poore, he may claime or rather retaine the fift part, for the safe keeping. (d) If a Douker finde drowned goods upon eight cubits deepe, hee gaines the third part; and if on fifteene cubits, then he obtaines the halfe; but upon one cubite, onely the tenth part. (e)

Yet if the finder be rich, and hath found goods by chance, hee should rather give it to the Church or poore,

poore, as some say. (f)

f *Autb. omnes  
peregrini com-  
munia de suc-  
cessionib.*

But now-adayes this go-  
eth farre otherwise; first, be-  
cause persons endued with  
the superiority or signiory of  
any part of the Sea-coast, do  
claime all or a part of these  
things, whether cast forth  
of ships, or otherwise com-  
ming upon their land, (g) *g O'error.*  
which otherwise before was  
allowed to the finder: (b) *h Eod.*

Even so, when shippes or  
boats were found on the sea,  
or at the coast thereof, with-  
out any living creature ther-  
in, and no man claiming the  
same for the space of a yeere  
and a day, then was the halfe  
al-

i *Vide statutu. regis Alex. Scot*

k *L'Admirall de France.*

l *Vide de off. Adm. Angl.*

allowed to the finder, and the remanent to the Prince, as a derelict: (i) but since the erection and constitution of Admiralls, this kinde of found goods are diversly parted; for in *France*, the King draweth a third, the Admirall a third, and the finder a third. (k) And of old, in *England*, although such things were divided twixt the Admirall and the finder, (l) yet now they are left to the arbitrement of both Admirals in *England* and *Scotland*, to consider the finder or taker with a condigne portion, for his travels, char-



charges, and hazard in all  
 circumstances; (m) even with m Per diploma.  
ta.  
 the halfe at least, according  
 to that which Tryphonius  
 sets downe, concerning  
 things found on land. (n) nl. si is qui. 63.  
in fin. de acq.  
ver. dom.  
 Yet, if the finder conceale  
 such goods, whether an-  
 chors, timber, jewels, dead-  
 men with money or jewels  
 about them, &c. he not one-  
 ly loseth his just part, but  
 may be also fined at the will  
 of the Admirall. (o) And o L'Admiral  
de France. & d.  
depl.  
 thus farre concerning things  
 found by the labour and tra-  
 vels of men.

If Whales, great grosse  
 fishes, ships, or boats, with-  
 out

out any living in them, by  
force of winde and waves  
onely, be driven to any coast  
or land, then all and whole  
appertaines to the Admirall:  
and so generally, all casual-  
ties whatsoever. (p)

p Per dd. diplo.  
& de off. Adm.

---

*Tit.*

---



TIT. XXV.

*Of things taken upon Sea.*

**N**OW followeth to treat of goods taken upon Sea; which are of three sorts: for either they are taken from Pirats, and sea-thiefes; or from professed enemies in lawfull warfare; or from such as not professing open warre, allowes taking rest to be exercised against us. Which kinde of taking, is covered with the title

title of letters of Marque,  
called *Ius represaliarum*.

And first, touching that  
which is taken from Pirats,  
sith the goods which they  
have wrongfully taken from  
others; whether they be  
found in their owne, or in  
their successors possession,  
are esteemed to bee a just  
prey to any taker, so that  
account be made thereof to  
the Admirall: in case the ta-  
ker finde the goods of his  
country man or friend with  
the Pirat, hee should make  
the same forth-comming to  
the just owner claiming the  
same; his cost, charges and  
hazard,

hazard, being alwaies considered and allowed; (a) so that if any man buy or redeeme his neighbours ship from a Pirat or enemy, hee must receive the price thereof from the owner. (b) But if no man claime the goods taken from a Pirat, then should the same be delivered to the Admirall, who ought to consider the taker with his due part thereof.

*a Per l. Pomponius de acq. rei dom.*

*b Per l. mulier: de cap. & poss.*

If a ship or goods be taken by a professed enemy, who hath not brought it in *presidia vel locum tutum*, for the making of a prescription, or a right, and afterward

ward the same is taken back,  
 and recovered by any friend,  
 and the just owner claime  
 the same, it ought to be re-  
 stored to the owner; for that  
 by the law, *Huiusmodi res*  
*non tam capta quam recepta*  
*intelligitur.*(c) But when such  
 goods become a just and  
 lawfull prize to the taker,  
 then should the Admirall  
 have a tenth part: for so of  
 old, the tenth part of lawfull  
 spoile, was offered to God,  
 in a manner; as we may  
 learne by that which *Abra-*  
*ham* returning from victory  
 over five Kings, offered to  
*Melchisedeck*: and the rem-  
 nant

c per d. l. Pom-  
 ponius, & per l.  
 in bello. parag.  
 si quis seruum  
 in pr. ac capt. &  
 post.

nant of the spoile should be proportionally divided amongst the takers, according to the law of God, set downe by *Moses*, (e) and e Deu. 20. practised by King *David*; (f) f I Reg. 30. and yet not onely amongst severall persons, according to every man his proved travell and hazard. (g) So that g c. dicat aliquis parag. 23. q. 5. & c. ius militum re dist. 1. the ship that sets no saile, fights not, nor hazards not with the rest, should have no part with the rest, thereof. (h) Provided alwaies, L'Admirall de France. that first and formost, the prisoners, captives, and taken goods of preyes, be in due time presented to the

Captaine, to be disposed by the Admirall: so that if any man breake bulk, meddle, or dispose of any of those goods before, he may be punished, and the receiver or buyer prisoned, untill caution bee found, that these goods shall be forth-comming to the Admirall, and just owner, according to a decision past betwixt the King of *Scotland* and *Maubray*, Anno 1487.

i *Tom. v. c. 24.* 17. *Iunij.* (i)  
p' *gisse Scot.*

If two forraine Nations be at warre, and the one take a shippe from the other, and bring her into a Port or road within the bounds of a  
neu-



neutrall Nation, alike friend  
to both, then may the Ad-  
mirall of that neutrall Nati-  
on ordaine that ship so taken  
and brought within the said  
bounds, to be restored to her  
owner; and the persons cap-  
tives, to their former liberty,  
even as if she had beene  
brought backe to her owne  
Port and Countrey a-  
gaine. (k)

Besides that, generally in  
all cases, the action and cause  
of liberty, as priviledged,  
should be favourably consi-  
dered: and it is the honoura-  
ble practice of Princes, to  
make their Countreyes an

*k Per l. post-  
liminium. parag.  
postliminio. de  
cap. & postlim.*

*l Per l. libertas.  
de reg. iur.*

*Asylum*, or sanctuary, to all distressed strangers that bee not Pirats.

Lastly, concerning letters of Merque, as we speake, or *droict de Merque*, as Frenchmen tearme it, *sive ius represaliarum*, and goods and things taken under that title upon sea; surely, as farre as we may, we should ptease to keepe Gods law set downe

by Moses, (m) practised by King Amasia, (n) and confirmed by the Prophets: (o) that the father should not be punished for the sonne, nor the sonne for the father, but a difference to be alwaies put be.

m Deut. 24. 16.

n 2 Reg 14. 6.

o 1 Chr. 25. 4.

o Jer. 29. 3.

Ezech. 18. 20.

betwixt the guilty and the innocent. Which thing moved Emperours to make constitutions for the repressing of reprefalies in certaine respects. (p)

*p Vide anibens.  
imo. C. ne filius  
pro patre.*

Notwithstanding, if our patience be so oppressed with the increafe of robberies, spoyles, and violence upon sea, by men falsely professing friends, in such sort that upon no supplication, intercession, nor other travels, the Princes of these wrongfull Nations (who onely can and should repress and redresse) will doe justice, or neglect to doe their office; then be-

cause such a dealing imports a iust cause of lawfull hostility and warfare, I see not but that such a calamity may and ought to be repressed, at least by these reprisals and letters of Merque; (q) specially, sith that cause, in effect, resembles a warre denounced without solemnities of clarigation.

q Vide Bartol.  
laid de represal.

And therefore, both according to the lawes of *England*, letters of Merque are allowable; and according to the old custome of *Scotland*; and the tenor of the Act of Parliament made by *James the first of Scotland*, (r)

con-

re. 131. c. 10.

concerning shipwracke, to be followed for a rule to such cursed cases, that is to say, that other Nations should have the like favour of us, that they shew to us.

Now being agreed that letters of Merque are lawfull, as they are by statutes, customes and reason, specially upon a matter of great importance, and after a due warning, intimation, and one requisition; so that it be done by the Prince, and

solemnly: (f) then what goods happen to be taken by that meanes, should be brought and presented as  
 aforc-

*(Per gloss. in  
 c. episcopus. 18.  
 dist. 6. DD. in  
 c. si contra. &  
 c. 1. de milite  
 vasallo qui cen-  
 suram.*

aforesaid before the Admirall; (c) that a just Inventory may be taken thereof, for divers good respects.

*Per l. si quis in  
servitute. de  
furt. & l. ait  
praetor. parag. si  
debitorem. Que  
in fraud. cred.*

*Tit.*



TIT. XXVI.

*Of Fishers, fishing, and traf-  
fiquers therewith.*

**A**Lbeit hunting, haw-  
king, and fishing, be  
of one kinde, as sub-  
ject to a like law and liber-  
ty, (a) because what wilde  
beast, fowle, or fish be once  
taken by any man, common-  
ly it becommeth his owne  
proper by the lawes of Nati-  
ons; yet is there a difference  
twixt these three: for, albeit  
hunting

*2 l. 1. in fin. de  
acq. rer. com. &  
parag. fere in-  
st. de ver. divis.*

hunting and hawking be almost every where lawfull, yet fishing is forbidden in other mens ponds, stanks and lakes, (b) as comparable with theft.

*bi in iur. um*  
*13. perag. fin. in*  
*fin. de in iur.*

*Iacob 3. ult. 60.*  
*& Iacob. 5. p. 4.*  
*cap. 12.*

Yea, now a-daies, in rivers, and in parts of the Seas neereſt to the poſſeſſions of men having grant and infeſtment from the King, may fiſhing be forbidden, but no private man, without the grant of the Prince, upon any pretence, or allegation of long conſuetude and preſcription, may acquire the propriety of any ſuch part of the ſea, as to prohibite others



others to fish there also; (c) c. l. prescrip. de usufructu.  
for such prescriptions onely  
pertaine to Princes.

To returne to the quality  
of fishing; sith it is not on-  
ly allowable to all sorts of  
persons, (d) but also com- d. c. 1. & 2. de  
cler. venat. & c.  
1. in cleric. &  
mon. 1.  
mendable, and alwaies to be  
preferred to all other trades  
and traffiques upon sea, not  
onely for necessities, but  
also for the great good and  
profit redounding thereby;  
all ciuill and vertuous Prin-  
ces have diversly forth-  
showne their care, for the  
entertaining and advancing  
thereof: as, by ordinances  
to build shippes and boats  
to

*e; Vide lare. act.  
parl. Scot.*

to that purpose; (e) and by their wise appointing of certaine onely times for the fishing, as namely, of Salmon, under paines not onely of Fynes, but also of forfeitures, and of death, according to the manner of the offence, and contempt of their decrees and statutes. (f) Which Princes also (for the increale of fishes) have, as it were with common consent, forbidden the making, setting, and using of crowes, yatts, dammes, fosses, tramelets, parkings, dyking and herry-waters, in any waters (g) where the sea ebbes and flowes,

*f Vide statuta,  
& constit. &  
regū Franc.  
Angl. & Scotie.*

*g Vide statut.  
Angl. & Scot.  
& l'Admir. de  
France.*

flowes, under paine of confiscation of all the goods of the transgressors in Scotland. *b*

*h 1ac. 6. parl. 6.  
cap. 89.*

Yea, albeit that any man were of old infetted with keeping of crwiffes, weares, and kiddles, &c. yet must he keepe the Saturdaies sloop : that is, to lift the same from Saturday at after-noone till Monday; and also to make each heck or mesh of his crwiffe three inches wide, *i* except for taking of smelts, loches, and such like that will neuer be bigger : as also, for to let the same upon the waters, that the mid-streame may

*i 1ac. 1. p. 1. c. 11.  
1ac. 6. p. 7. c. 11.*

m lxx 3.p.10.  
cap. 73

may have the iust space of fixe foot wide, under the paine of five pound. (*m*) And thus farre concerning the maintenance and increase of fishes, by our Scottish lawes and custome.

It followeth, to set downe concerning the Filthers their safety and priviledges. Wherein it is provided, first, that all Shippes sayling into the parts where Herring are taken, at least during the taking thereof, shall let downe saile after day light past, let their Anchor fall, and keepe watch with Lanterne and light, untill day light appeare

again, lest otherwise the poor  
Fishers should be over-run,  
or their nets broken: their  
paine in Denmarke, is death  
to the transgressors: (n) and <sup>n Denmarke:</sup>  
the Fishers are likewise for-  
bidden to use light in their fi-  
shing by night, lest they de-  
ceive saylers with the false  
shew of a port. *nn*

Likewise, lest any of the Fi-  
shers harme or hurt one ano-  
ther, it is diversly provided, as  
also cōcerning the right mea-  
sure of their nets in length &  
in bredth; (o) as may be leen <sup>o Vide l'Admi-  
rall de Franc.</sup>  
by the Statutes of sundry na-  
tions *Vid statuta Angliæ.*

And specially therefore it is

O

agreed

*nn Vlpian in l.  
ne piscatores de  
incend. rui.  
naufr.*

*p Vide Forman  
his Register.*

agreed of long time sithence,  
by the Sea-farers on the  
Forth of Scotland; (p) first,  
that no ground-draffe or  
drag-net, be set before  
March, nor upon deeper  
water then fourteene fa-  
thome.

Item, that none shall lye  
to their neighbours when he  
shall be asked concerning  
the length and depth of his  
tewe, when he is in driving:  
neither yet wittingly and  
wilfully to suffer his tewes  
and nets to flit, and runne o-  
ver one another, under the  
paine of ten pound for every  
transgression of the premi-  
fed

fed articles.

Item, above all, that from the Sun-set on Sondag, no man lay nor hale nets or great lines, or exercise any labour, under the foresaid paine.

Item, for the further encouraging of Fishers in the West and North Isles of Scotland, there is a Statute that no other customes be sought of the Fishers in the said Isles, but only the Kings customes; under the paines due to manifest oppressors against them who exact the same. (q)

q Mar. p. 6. 6. 54

Lastly, concerning Fishers

O 2

and

and traffiquers with fishes, it is ordained that not onely all fish flaine and taken neere to the coast of *Scotland*, be brought and presented to the market places, where the takers or slayers thereof dwell: (r) but also all fishes taken in the North and West Isles or Firths, to be brought directly to the townes where the Fishers dwell (that the need of the countrey may be first served) (s) and presented to the market places : from which none may carry them away to packe and peil, but onely betwixt the houres of eleven

r *Iacob. 5. p. 9.*  
a. 98.

s *Iac. 6 p. 4. c.*  
60.

ven



ven and two in the after-  
noone, under the paine of  
confiscation. In which mar-  
kets, it is lawfull to the Pro-  
vost & Bailiffes to set downe  
prices, and to compell the  
packer and peiler to sell a-  
gaine for the need of the  
Lieges. (t) Which being 1ac. 5. p. 7. c. 98  
done, they may transport the  
remainder where they  
please. (u) And in case they u 1ac. 6. p. 4. c. 60  
contemne, then their fishes to  
be eschete, two parts to the  
King, and the third to the  
Magistrate. (x) x 1ac. 6. p. 6. c. 86

Likewise, concerning the  
barrelling of fishes, it is  
ordained that the measures

prescribed of old shall be kept: *videlicet*, each barrell of Herring, or of white fish,

y *lac. 5. p. 4. c. 57*

*lac. 6. p. 4. c. 197.*

to be of twelve gallons; (y) and the barrell of Salmon of fourteene gallons, according

z *lac. 3. p. 10. c.*

276.

to the measure of *Hamburg*, & under the paines of elcheting thereof from the packer, and

a *lac. 3. p. 10. c.*

26.

of five pound to be lifted from the Couper. (a) And

therefore hoop irons to be made in each towne; for the tryall and gaging thereof (b)

b *lac. 3. p. 14. c.*

100.

*Vid. statuta Anglia. Tit. of fishing; in the Abridgements*

*Tit.*



## TIT. XXVII.

*Of the Community and Propriety of the Seas.*

**H**aving of late seene  
and perused a very  
learned, but a subtle  
Treatise (*incerto authore*) in-  
tituled *Mare liberum*, contai-  
ning in effect a plaine Pro-  
clamation of a liberty com-  
mon for all of all Nations,  
to fish indifferently on all  
kinde of Seas, and conse-  
quently, a turning of un-  
O 4 doubted

doubted proprieties to a community; as the fifth chapter thereof at large discovers (wherein the unknowne Authour protesteth, that he may for his warrant use the authority and words of such old Writers as have beene esteemed most mighty in the understanding and judging upon the naturall condition of things here below) and the Discourse, being covered with the maintenance of a liberty to saile to the Indians; I thought alwaies expedient by occasion of this argument of fishing contained in my former Title,  
by

by Gods grace, to occurre thereunto; as manifestly direct, at least (in my weake sight) tending to the prejudice of my most worthy Prince and his subjects; and that not onely by arguments derived from the first verity of the nature of things, but also from his owne proofs, warrants, and their Authors.

And yet before I goe any further, I cannot passe the Authour his ridiculous pretence, in both Epistle and beginning of his Discourse; as for a liberty onely to saile on Seas: a thing farre  
off

off from all controverſie, at  
leaſt upon the Ocean; ſpeci-  
ally, ſince paſſage upon land  
through all Regions Chri-  
ſtian, is this day ſo indiffe-  
rently permitted to all of all  
Nations, even to Turkes,  
Iewes, Pagans, not being  
profefſed enemies; and ther-  
fore much leſſe to be reſtrai-  
ned on Sea in all reſpects. So  
that I cannot but perſwade  
both my ſelfe, and other loy-  
all ſubjects, that the ſaid pre-  
tence is but a very pretence;  
and ſo much the more to be  
ſuſpected as a drift againſt  
our undoubted right and  
propriety of fiſhing, on this  
ſide

side the Seas.

Now remembering the first ground, whereby the Authour would make *Mare liberum*, to be a position fortified by the opinions and sayings of some old Poets, Orators, Philosophers, and (wrested) Iurisconsults, that Land and Sea, by the first condition of nature, hath beene and should be common to all, and proper to none: against this I minde to use no other reason, but a simple and orderly reciting of the words of the holy Spirit, concerning that first condition naturall of Land and Sea

Sea from the very beginning; at which time, God having made and so carefully toward man disposed the four Elements, two to swimme above his head, and two to lye under his feet: that is to say, the Earth and Water, both wonderfully for that effect ordered to the up-making of one and a perfect Globe, for their more mutual service to mans use: according to this, immediately after the creation, God saith to man, *(a) Subdue the earth, and rule over the fish:* which could not be, but by a subduing of the waters also.

*a Genes. 1. 28.*

And



And againe, after the  
 Floud, God saith, *Replenish*  
*the earth:* (b) and for the bet- b eod. c. 9. v. 12  
 ter performance hereof,  
 God in his justice against the  
 building of Babylon, scat-  
 tred man-kinde over all the  
 face of the earth; (c) there- c eod. c. 11. v. 32  
 fore is it that *Moses* saith, (d) d eod. c. 10 v. 5.  
*These are the Iles of the Nati-*  
*ons divided in their lands.* So  
 that hereby is evident that  
 things here done, are not so  
 naturally too common;  
 sith God the author of na-  
 ture, is also as well author of  
 the division, as of the cōposi-  
 tion: and yet howsoever,  
 in

in his justice as is said, yet in his mercy also and indulgent care, for the welfare and peace of mankind. For those are sentences both vulgar and sure, set downe by the Romane Iurisconsults, *e Communio parit discordiam. Quod communiter possidetur, vitio naturali negligitur. Habet communio rerum gerendarum difficultatem.* (f)

*e Ulp. l. qui ne  
que. de reb. cor.  
qui sub tutel.*

*Et. patet. parag.  
discussione de  
leg. 2.*

Afterward, the earth, by the infinite multiplication of mankind, being largely replenished, and therefore of necessity thus divided, and things upon the earth not sufficient for the necessities and

and desires of man in every region, followed of force the use of trading vpon the seas; not onely for the ruling of the fish therein, according to the commandement given by the Creator at the beginning, but also for transporting of things necessary for the use of man. For the which, and other causes above mentioned, the waters became divisible, and requiring a partition in like manner with the earth; according to that of *Baldus*: *Videmus, de iure gentium, in mare esse regna distincta, sicut in terra arida.* (g)

g. *Ad legem 12  
de rer. divis.*

And

And thus farre have we learned, concerning the community and propriety of land and sea, by him who is the great Creator and authour of all; and therefore of greater authority and understanding then all the Grecian and Romane Writers, Poets, Orators, Philosophers, and Iuriconsults, who-so-ever famous: whom the author of *Mare liberum* protests he may use and leane to without offence.

Now, sith the weaknesse of this his first and principal ground doth this way appeare; let any man judge upon

upon the truth of that which Cicero (his man) sets down, *Sunt privata natura nulla*; and likewise of all other his authors their opinions, for the fortification of an originall community of things.

It followeth to examine the chiefe warrants of *Mare liberum*; and to consider how farre they may beare forth to a common liberty for fishing, on all seas indifferent-ly.

The author cites *Vlpian*, a renowned Iurisconsult indeed, and *Martian* their sentences; alleaging (b) that *Vlpian* should say, (i) *Ante*

P

edes

*h pagina 25.  
i l. iniuriarum.  
parag. ult. &  
parag. si quis de  
iniur.*

*ades meas aut pratorium ut piscari aliquem prohibeam, usurpatum quidem est, sed nullo iure, adeo ut contempta ea usurpatione, iniuriarum agere potest. sc. prohibitus.* That is to say, if I should forbid any man to fish before my house, he may mis-know such an usurpation, and intend action of injury against me, for a wrongfull staying him from fishing there.

*kd. p. r. g. si quis.*

But as I read, *k Vlpian* his words are thus; *Sunt qui putant iniuriarum me agere posse:* that is, there are men who thinke, I may intend action, &c. It is true also, that *Martian*

tian saith, *Nemo ad littus piscandi causa accedere prohibetur.* (l) And yet neither of these two Iuriconsults, pronounceth absolutely in these cases, but upon another higher warrant: and therefore *Vlpian* addes, *Sapissime rescriptum est nec piscari, &c. prohibere posse.* (m) That is, it is by writ most often answered, &c. Which *Martian* expounds most clearely, when he saith, *Nemo igitur ad littus maris piscandi causa accedere prohibetur;* and subjoynes his warrant, *Idq; Divus Pius piscatoribus Formianis rescripsit:* (n) that is, No man

l. 4. de rer. divis.

m d. par. 8. quis in fis.

n d. l. 4. de rer. divis.

is forbidden to come to the sea side and fish; as the Emperour *Divus Pius* did write to the Fishers of Formian. So that you see the Emperours to have been warrants to these Lawyers, and their written opinions, concerning the voyage of the sea.

Now, to passe the propriety which hereby we see these Emperours did claime on the seas, I aske first, to whom did the Emperours write such resolutions? was it not to the professed subjects of their owne Empire? and what? even the usage of the seas, and coasts of their Empire,



Empire, to be indifferently common to every one of their own subjects: and how? *Iure gentium*; that is, according to the law kept by all other nations, to every one of their own nation in like cases.

Moreover, albeit these and other Romane Lawyers pronounce so, concerning the community of the sea-shoare, and coast, that private men may build houses within the floud-marke, and appropriate them to themselves, according to that which *Neratius* writes, *Quod in littore quis edificat, eius fit*: (o) that is, what

P 3

o l. quod in littore. de acq. rer. dem.

a man builds on shoare, it be-  
 commeth his owne; yet up-  
 on this condition, *Tamen de-*  
*cretum prætoris adhibendum*  
*est ut id facere liceat*, saith  
*Pomponius*: (p) that is, provi-  
 ding the Prætor his decree  
 be interponed thereunto; or  
 that the Prince give grant, as  
*Vlpian* writes; (q) *Vel ut prin-*  
*ceps concedat*. As for the rem-  
 nant of these sorts of war-  
 rants alledged for *Mare libe-*  
*rum*, sith they sing all one  
 song for the common use to  
 the people, and propriety to  
 the Prince, if men will but  
 onely marke them; I need  
 not stay further upon them.

p. l. *quavis de*  
*acq. rer. dom.*

q. l. *prohibere.*  
*parag quid et si.*  
*Quod vi aut*  
*clam.*

So that every man may see both the use of the word *commune*, and the meaning of *Iure gentium* among these Lawiers, whereupon this *Mare liberum* appeares so to be founded, that it cannot be shaken. For, *commune*, there is nothing else but *publicum*, *quasi populicum*; signifying a thing common for the usage of any of one sort of people, and not for all of all nations: according to that of *Modestinus*, *Roma communis patria est.* (r)

r l. Roma. ad  
municipal.

Neither yet doth that word, *Iure gentium*, meane any law set downe by com-

mon consent of all nations; but onely notes the example of the law, or custome of other nations: as if they would say, the liberty of fishing on our seas, and of other doing there and at shoare, should be common to every one of the Romane Empire, like as the same is common to all of all other nations, on their seas, and their shoares.

Likewise, that of *Placentinus*; *Quod mare sit in nullius bonis, nisi solius dei*: that is, GOD is onely Lord of the sea; and so say we with King *David*, that the land also

also is the Lords. (f) But that Epistole.  
 of Faber, (t) *Mare esse in pri-* Ad parag. lit-  
*mo iure quo omnia erant* torum inst. de  
*communia*, I need no other- ver. divis.  
 wise to refute now, than I  
 have done above alrea-  
 dy.

And these are the Authors  
 and warrants whereupon  
*Mare liberum* inferres his  
 conclusion ; *Demonstra-*  
*tum igitur nec populo, nec pri-*  
*vato ius aliquod in mare*  
*competere posse, quum occupa-*  
*tionem, nec natura, nec*  
*publici usus ratio permittat.* (u) u pag. 28.  
 Which, how it followeth  
 upon the premisses, let men  
 judge; sith neither these  
 his

his Authors make for him, neither yet the reason inserted in the conclusion beares out; which is, *quum occupationem nec natura, nec publici usus ratio permittat*: that is, neither nature, nor the common need, suffers the sea to be acquired in property to any occupation.

For answer, first concerning the nature of the sea, as supposed impossibly occupable or acquirable; Is this so thought because the sea is not so solid, as is the land, that men may trade thereon, as upon land? or that it is continually flowing to and fro?

fro? Surely, that lacke of solidity for man his trading thereon by foot, shall not hinder the solid possession of it, farre lesse the occupation and acquiring, if we will give to the sea, that which the Iuriconsults indulgently grant to the land, which also cannot be denied. *Paulus* the Iuriconsult saith, (x) *Qui fundum possidere velit, non utique omnes glebas eius circumambulet, sed sufficit quamlibet partem eius introire, dum mente & cogitatione hac sit ut totum possidere velit usque ad terminum*: that is, it is not needfull for him who would possesse

x In l. possideri.  
de acquir. poss.

possesse himselfe in any part of the land, to goe about and tread over the same; but it is sufficient to enter-in upon any thereof, with a mind to possesse all the rest thereof, even to the due marches. And what can stay this to be done on sea, as well as on land? And thus farre concerning the solidity.

As for the flowing condition of the sea, howsoever it be liquid, fluid, and unstable, in the particles thereof, yet in the whole body, it is not so : because it keepes the prescribed bounds strictly enough, concerning the chiefe



chiefe place and limits thereof.

VVhich discourse, gives us occasion of force to answer to a scoffe cast in by the Author of *Mare liberum*, concerning the possibility also of marches and limits, for the division of the seas: y<sup>y</sup> Pag. 31.

*Mundum dividunt* (saith the forelaid Authour of *Mare liberum*) *non ullis limitibus, aut natura, aut manupositis, sed imaginaria quadam linea: quod si recipitur, & Geometra terras, & Astronomi coelum nobis eripient:* that is, they divide the world, not by any marches, put

put either by nature, or by the hand of man, but by an imaginary or fantastick line: which kinde of doing being embraced, the Geometers may steale away the earth, and the Astronomers the heavens from us.

It is true, that there are not in every part of the sea lles sensible (as *Gernsey* is to *England* in the narrow seas) or sands (as the *Washes* at the West seas of *England*) nor rockes, or other eminent and visible markes above water, for the designation of the bounds (or laying-out the limits) of the divisible parts thereof:

thereof: but G O D, who is both the distributer and first Author of the diuision and distinction of both land and sea, hath given an understanding heart to man for the same effect, as well as for all other necessary actions wherein he hath to employ himselfe: so that to a very wonder, God hath diversly informed men by the helps of the Compasse, counting of courses, sounding, and other waies, to finde forth, and to designe *finitum in infinito*; so farre as is expedient for the certaine reach & bounds of seas, properly pertaining  
to

224. *An Abridgement*

to any Prince or people.

*z' in sect. nullius  
in tractat. de  
insula.*

Which bounds *Bartolus* & hardly extends and allowes for Princes and people at the sea side, an hundreth miles of sea forth from their coasts,

*\* Per l notio-  
nem de verb. sig.*

\* at least; and justly, if they exercise a protection & conservacy so far: and this reach is called by the Doctors,

*Districtus maris, & territorium.*

*a Gloss. in c. ubi  
periculum. pa-  
rag. porro. de  
electionib. lib. 6.  
b m l. si testa-  
mentum. de inst.  
& subst.*

*um.* (a) It is true, *Baldus* (b) esteemeth *potestatem, iurisdictionem & districtum*, to be all one.

To conclude then, since *Papinian* writes in *finalibus questionibus vetera monumenta sequenda esse*; (c) what more evident

*cl. in finalibus.  
com. divid.*

evident

evident monuments for our King his right in the narrow seas, then these Isles of *Gernsie ? &c.* And for the Eastern seas, direct from *Scotland*, what is more antiently notorious than that covenant twixt Scottish men and *Hollanders*, concerning the length of their approaching toward *Scotland* by way of fishing ?

And thus farre through occasion of answering to that alleadged impossibility, of acquiring the Sea by occupation, because (as would appeare) of the unsolidity therof, for any foot treading.

Q

It

It rests to touch the other  
 cause naturall, for that other  
 impossibility, which may be  
 the continuall fluxe and in-  
 stability of the Sea; in such  
 sort, that it would appeare  
 not aye to be one and the  
 selfe same body, but daily  
 changeable. For answer, I  
 must remember that which  
 the Iuriconsult sets downe  
 so prettily: (*d*, Suppose (sayes  
 he) a certaine Colledge of  
 Iudges, or a Legion of Soul-  
 diers, or the particular parts  
 of a Ship, or of a mans bo-  
 dy, should so continually  
 and often be changed and  
 altred, that none of that first

Col-

*d in l propositi-  
 batur. de iud.*

Colledge or Legion could be found alive, nor yet any part of the Shippe or body could be so certainly demonstrate, that it might be affirmed for the very same that it was at the first; yet if that Colledge or Legion be in number full, and the ship or man whole and able in all the frame, they shall be accounted and esteemed not to be new, but to be the very same which they were at the beginning; even so, however the sea many waies and hourly changes, in the small parts thereof, by the ordinary rush on land, mixture with other

waters, swelling in it selfe, exhalation and backe receipts thereof by raine; yet since the great body of the Sea most constantly keepes the set place prescribed by the Creator, I see not in this respect neither, wherefore the nature of the Sea should not yeeld to occupation and conquest. And thus farre concerning *Mare liberum* his last and great conclusion, against all appropriation thereof by people or Princes. I call it his last great conclusion, because of other two passing before, whereof the first is this; *Mare igitur proprium*  
ali-



*alicuius fieri non potest, quia  
natura iubet esse commune: (e)* e pag. 21.

and for what reason? Even  
because Cicero, Virgil, and  
Plautus have said so. To  
whom I could also assent  
concerning the great, huge,  
and maine body of the sea.

His next conclusion is this;  
*Est igitur mare in numero eo-  
rum quæ in commercio non  
sunt, hoc est, quæ proprij iuris  
fieri non possunt: (f)* that is, f pag. 25.

The Sea to be of that order  
of things, which cannot bee  
appropriate to any man.  
His warrants for his conclu-  
sion also are the Romane  
Lawyers, whom I said to be

vested by *Mare liberum*; and therefore must shew the same, contrary to his purpose indeed. *Martianus*, (g) as the Author of *Mare liberum* largely grants, (b) saith, that if any private man have himselfe alone, by any lawfull space of time sufficient for a prescription, kept and exercised fishing in any creeke or nooke of Sea, which they call *Diverticulum*; hee may forbid all others to fish therein: which *Papinianus* (i) also confirmeth. The which, as I accept, so I would further demand of him. By what reason should a private man, who

gl. si quisquam  
divers. & temp.  
prescrip.

h pag. 24.

i l. prescriptio  
de usu cap.

who hath no other care nor respect but to himselfe alone, be thus priviledged and preferred to a Prince? who not for himselfe; but for his people also in common, yea and for the safety of all traders passing his coasts, with great charges and care protects and conserveth the Seas nearest unto him: shall not this Prince be acknowledged, at least with the good which that Sea, conserved by him, offers so directly to him? And I pray you say, What lesse authority had *Leo* than the rest of the Romane Emperours, to grant to every

k Novell. const.  
102.103. &  
104.

one in particular, having possessions at the Sea side, as much of the sea as was nearest against their lands, (k) with the fishings thereof? What then, shall not Princes be equalled, in these cases, with subjects? Or rather, have not all Princes a like right & power within their own precinct and bounds, as these Roman Princes had?

But now to draw neerer to the chiefe point of our purpose, and so to the end thereof: as I accepted *Mare liberum* his former large graunt, so now also doe I more heartily embrace the  
next,

next, which is this; When  
 after these his conclusions, he  
 had said *in tanto Mari siquis  
 piscatu arceret, insana cupidi-  
 tatis notam non effugeret: (l)* pag. 30.  
 he subjoynes according to  
 that of Cicero, *(m) Quando  
 sine detrimento sua quis potest  
 alteri communicare in ijs quæ  
 sunt occupanti utilia & danti  
 non molesta, quid ni faceret:*  
 and subjoynes afterward, *(n)* n pag. 35.  
*Et si quicquam eorum prohibe-  
 re posset, puta piscaturam, qua  
 dici quodammodo potest pis-  
 ces exhauriri:* that is to  
 say, If the uses of the  
 Seas may bee in any re-  
 spect forbidden and stayed,  
 it

it should be chiefly for the fishing, as by which the fishes may be said to bee exhaust and wasted; which, daily experience these twenty yeeres past and more, hath declared to be over true: for whereas aforetime the white fishes daily abounded even into all the shoares on the Easterne coast of *Scotland*; now forsooth by the neere and daily approaching of the busse Fishers the shoales of fishes are broken, and so farre scattered away from our shores and coasts, that no fish now can be found worthy of any paines and travels; to the im-  
po-

poverishing of all the sort of  
 our home-fishers, and to the  
 great damage of all the Na-  
 tion. Whereby, I see at last,  
 the Author of *Mare liberum*  
 not so addi&t to serve any  
 mans particular desires, as to  
 answer (forsooth) to his pro-  
 fession of the lawes, that is, to  
 allow the proper right for  
 every man and nation, and  
 to hurt none; according to the  
 three generall precepts of all  
 lawes, set down by *Caius*, (o) in l. iustitia. de  
 rer. divis.  
 and after him by *Tribonia-  
 nus*: (p) *Honestè vivere; alte-  
 rum non ledere; & ius suum* p parag iuris  
 præcepta. de  
 iust. & iur.  
*cuique tribuere*: whereof the  
 second tryes and rules the  
 rest;

q l. nemo de  
reg. iur. & l. 14.  
de cond. indeb.  
& l. in e. de  
iure dot.

x l. rescriptum de  
distract. pig.

rest; according to the vulgar  
saying out of Pomponius, (q) *Neminem debere cum alterius  
damno locupletari*: and that  
of Tryphonius, (r) *Ex aliena  
iactura lucrum haurire non o-  
portet*. And therefore I would  
meet him with his deserved  
courtesie; even to proclaime  
*Mare liberum* also: I meane  
that part of the maine Sea or  
great Ocean, which is farre  
removed from the just and  
due bounds above mentio-  
ned, properly pertaining to  
the neereſt Lands of every  
Nation. *Atque ita esto mare  
vastum liberrimum.*

Tit.





TIT. XXVIII.

*Of War-fare shippes, and of the  
Captaines and Companies  
thereof.*

**A**Nd since wee have  
written above of pri-  
viledged shippes (a) a- a Tit. 12.  
mongst which the warfare-  
ships of Princes are first and  
chiefe) and somewhat of the  
conservacy of the Seas, in the  
last title; I cannot here passe  
the warfare-shippes un-  
mentioned, albeit not in such  
large manner and measure  
as

as their imployment now-a-  
dayes requires. As for the  
matter fit for their building,  
and things necessary for  
their forth-setting and pre-  
paration to Sea, I must refer  
the same to *Iulius Ferretus*,  
and to *Vegetius*, who have  
written largely thereupon.  
Some touch I have here sub-  
joyned, in the last Title of  
this Booke, concerning the  
materials: as likewise some-  
what is premitted concer-  
ning their priviledges, in that  
Title of priviledged shippes.  
Therefore would I here set  
downe (but very briefly)  
some thing concerning the  
Cap-

Captaines, Commanders,  
& Companies of the Prince  
his warfare-ships, the graces  
& vertues required in them,  
with their duties, power and  
preferment.

Captaines of Princes war-  
fare-shippes should be men,  
first, fearing God, because  
they must continually walke  
in the midst of the wondrous  
workes of God. Next, they  
should be stout, hardy, and  
couragious. Thirdly, vigi-  
lant, diligent, and carefull;  
and therefore very tempe-  
rate on Sea: (*b*) specially, be- b Ferretus.  
cause their employment, as it  
is full of hazard and danger,  
even

even so are their occasions  
 and opportunities sudden  
 and momentanie. There-  
 fore their commandement  
 and power over their com-  
 pany, not onely surpasseth  
 the power of Masters and  
 Commanders of private  
 shippes, but also that of the  
 Captaines on land; and  
 therefore their honour and  
 estimation every way high-  
 er also, because of their grea-  
 ter charge, care, and ha-  
 zard. Their duty toward  
 their company, is first, that  
 they chuse such as bee free  
 from hainous and scanda-  
 lous offences. (c) Next,  
 that

per J. 4. de re  
 militar.

that they suffer none of their company to bee idle, but to punish as well the sluggard as the rebellious : (d) yea, e-<sup>d per l. 6, eod.</sup> ven those who are irreverent towards them; (e) and e<sup>per l. 13, eod.</sup> againe, should with all loving care see to the due food of their company, heare their mutuall plaints, hold them in peace by all obedience, visit, refresh, and with all helpes comfort the hurt and diseased. (f) As<sup>f per l. 12, eod.</sup> for the Captaines their other duties to the Prince and Admirall, with their owne priviledges, they are all gathered out of old customes,

R

and

and at large set downe in  
that Booke called *L'Admirall*  
*de France?*

**Tic.**



TIT. XXIX.

*Of Watermen and Ferriers.*

**F**erryers and Watermen are bound to serve all true Lieges for their due fare; (a) so that they may be compelled thereunto: (b) and most justly, because it was in their owne hand and power from the beginning to give and apply themselves to that calling and trade, or not. And if therefore they

*a per l. 1. parag.  
si sunt advers.  
naut.  
b l. 1. & l. cum  
navarchorum.  
C. de navicul.  
lib 10 & l. liti-  
ca de public.*

faile, it shall be, according to the law of Scotland, a point of dittay or inditement against them in the first Justice-court : and if they transgresse unto the third time, they may be suspended from their trade, (c) except they can alleadge a just cause; as, of feud or hostility.

*1 ac. 3. parl. 13.  
c. 95.*

Item, it is ordained, for the easier boating and landing of men and beasts, that Ferriers make, and have ready, fit and convenient bridges, or else to lose their Boats. (d)

*1 ac. parl. 31.  
c. 20.*

Lastly, Ferriers and Watermen



termen are no lesse bound,  
than Skippers and Masters  
of shippes, to render againe  
what-ever they receive to  
bee carried within their  
Boats. (e)

el. i. parag.  
71111111. caupom.

But concerning their ordi-  
nary fares and hires, it is  
neither needfull nor expedi-  
ent in this place to recite the  
divers statutes made there-  
upon; because that first they  
are at great length set downe  
in the Statutes of *England*  
and *Scotland*: next, be-  
cause their fraughts have  
beene, according to the  
rate of times, changed and  
altered even to the triple, as

*Vide act. 1 ac. 3*  
*arl 3. c. 20. &*  
*arl. 7. c. 61. &*  
*Mariz. parl. 5.*  
*21.*

specially in Scotland (f) So that now also, according to the condition of this time, their portage, fraughts or fare, may be of new considered by his Majestie, or Admiralls, according to the quality of the boats, and the space of passage and time, either shorter, longer, or hazardfuller, during their service; but with a due *Proviso*, for the repressing of their rude and uncivill manners. For truely, if the Roman Iurisconsults might of old by any reason call Mariners, in generall, *Pessimus genus hominum*, (g) (which in these latter

*g. Vide tit. naut.*  
*a. ap. & tit. furt.*  
*a. vers.*

latter dayes for the most part  
is amended, partly through  
Christianity and civill con-  
versation, & partly; by good  
lawes, praise be to God; then  
may wee now use that same  
still, at least against the most  
part of Watermen and Ferri-  
ers; as requiring to be refor-  
med, or at least by correcti-  
on repressed. \*

\* *Second. l. 3.  
naut. camp.*

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R 4

Tit.



## TIT. XXX.

*Of Shipwrights.*

**T**O conclude this Treatise, there remaineth a speciall sort of persons to be considered and respected, as the forgers and framers of the instrumentall causes of all Sea-faring; to wit, Shippe-wrights, and builders of Ships or Boats, called by the Romans, imitating the Grecians, *Naupegi*: and by the Italians, following

ing the latter Grecians, *Calfatti*, as is above described; <sup>a Tit. 6.</sup> and therefore subject to the jurisdiction of the Admiralty (b) as accountable to the Admirall and his Iudges) as <sup>b per diplom. admirator. utriusque regni.</sup> accessories of sea causes, for their skill, diligence, and dutifull discharge in every respect, by a frame not onely likely & comely, but a worke also strong, ticht, and durable: or else they must undergoe the pains of the law, called *Lex Aquilia*; that is to say, all costs and scath happening by their unskilfulnesse, negligence, or what-ever other fault or amisse. (c)

c Per T. T. ad l. Aquil.

And

And therefore, first touching the materials, they should not onely furnish the same good and sufficient, but also, if the furniture pertain not to them, they must refuse to take from the furnishers bad and vnmeet geare and stufte for the worke. (d) As for example, Aller, Beech trees, and such like brickle and naughty timber for salt-water, or for the seas. Neither should they put greene timber in worke; but ought to fore-see if they can, that their wood be cut downe either at the wane of the Moone, and in the deepe of Winter, or at such

d Per l. 2. de  
nant § 2. 3.  
per Vegetium  
de re militar.

such time as experience declares wood to be most solide and durable. For timber cut at the contrary times, is commonly full of moysture; and therefore being afterward dryed, becomes clung, and open to receive water.

The like care and skill is required in the iron, and all other necessaries, to the end that the workes may prove strong, durable, right, and comely. This being done, it resteth to consider their hires and fees: which because they ordinarily depend on the conditions agreed upon with the party, which also

also commonly is cavelled withall before a full performance of their worke, upon surmises and quarrels; therefore to occurre to all such doubts and discords, the contracts of such bargaines should be (after the example of other seafaring dealings) made before the Admiralls deputy, or Iudge, and registred in their bookes. (d)

d Vide sup. of  
the Admirall  
Clerke.  
e l. fin: C. de  
parr.

f Vide de off.  
Adm. Ang.  
g Vide C. de  
monop. & ibi.  
DD.

Last of all, as Shipwrights were of old, (e) so are they also of late, forbidden, (f) under paine of treason, to communicate their skill and Art to enemies and barbarous people.

Like-



Likewise, they are forbid-  
den (as are also all other so-  
cieties of handy-crafts-men  
and trades-men) to conspire  
among themselves to en-  
hance their wages, or  
hire, or to receive  
excessive wa-  
ges. *b*

*b Vide de off.  
Adm.*

**FINIS.**